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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1985

JAMES R. DAVIS, Petitioner

v.

CITY OF ROSWELL, GEORGIA and
T.L. JOYNER, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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February, 1986

QUESTIONS PRESENTED

I. WHETHER THE RESPONDENTS' INTERFERENCE WITH PETITIONER'S ATTEMPT TO SECURE EMERGENCY MEDICAL CARE FOR HIS TERMINALLY ILL WIFE VIOLATED A DUE PROCESS LIBERTY INTEREST OF PETITIONER'S ARISING FROM THE MARITAL RELATIONSHIP?

II. WHETHER PETITIONER COULD SUE INDIVIDUALLY, RATHER THAN IN A REPRESENTATIVE FOR CAPACITY, TO RECOVER DAMAGES FOR RESPONDENTS' INVASION OF HIS RIGHT TO SECURE EMERGENCY MEDICAL CARE FOR HIS TERMINALLY ILL WIFE?

III. WHETHER THE GEORGIA STANDARD FOR GRANTING JUDGMENT N.O.V. AND NEW TRIAL, AS APPLIED IN THIS CASE, RESULTED IN A DENIAL OF PETITIONER'S FEDERALLY PROTECTED RIGHTS UNDER SECTION 1983?

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CITY OF ROSWELL and T.L. JOYNER, Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

James R. Davis respectfully petitions this Court to issue a writ of certiorari to review the judgment of the Supreme Court of Georgia entered October 30, 1985. (A-2) This petition comes after the Supreme Court of Georgia denied Davis' petition for reconsideration on November 19, 1985. (A-1) Coming within the 90 days allowed for the filing of petitions for certiorari

under 28 U.S.C. §2101(c), this petition is timely filed.

OPINION BELOW

The opinion of the Supreme Court of Georgia in this case is reported at 255 Ga. 158, 335 S.E.2d 582.

JURISDICTION

Jurisdiction is conferred upon this Court to review the judgment of the Supreme Court of Georgia by 28 U.S.C. §1257(3).

STATUTES

42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

O.C.G.A. §5-5-50:

The first grant of a new trial shall not be disturbed by an appellate court unless the appellant shows that the judge abused his discretion in granting it and that the law and facts require the verdict notwithstanding the judgment of the presiding judge.

O.C.G.A. §9-11-50(b):

Motion for judgment notwithstanding the verdict -- When made; new trial motion. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted,

the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 30 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or, if a verdict was not returned, such party, within 30 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment

as if the requested verdict had been directed or may order a new trial.

O.C.G.A. §1-11-50(c):

Motion for judgment notwithstanding the verdict -- Conditional rulings on grant of motion; motion for new trial by losing party.

(1) If the motion for judgment notwithstanding the verdict provided for in subsection (b) of this Code section is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall

proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and, if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial not later than 30 days after entry of the judgment notwithstanding the verdict.

O.C.G.A. §9-11-50(d):

Motion for judgment notwithstanding the verdict -- Denial of motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new trial in the event the appellate court concludes

that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this Code section precludes it from determining that the appellee is entitled to a new trial or from directing the trial court to determine whether a new trial shall be granted.

STATEMENT OF CASE

A. Introduction

This case is an action under 42 U.S.C. §1983. Unlike the vast majority of such cases, it was initiated in state rather than federal court. Unfortunately for the petitioner, James R. Davis, the state judiciarry in Georgia has seriously misconceived the nature of the law applicable to this case and it has enforced its procedural rules in a manner that would undermine the ability of litigants in Georgia courts to assert rights under section 1983. Moreover, there is even some evidence of animosity on the part of the trial judge toward section 1983 actions, notably those aimed at establishing municipal liability under Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978). After the petitioner had to undertake one appeal to overcome summary judgment dismissing his case, Davis v. City of Roswell, 250 Ga. 8,

295 S.E.2d 317 (1982), he eventually won a jury verdict. Thereupon, the trial judge granted the respondents' motion for judgment n.o.v. and conditional order for a new trial. A second round of appeals followed in which the Georgia Supreme Court ruled that the evidence adduced by the petitioner was insufficient as a matter of law to support the verdict. City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582 (1985). That court considered the case only on the theory of the inadequate training and supervision of a police officer.

As will be shown in greater detail, the decision of the Georgia Supreme Court below did not discuss or apparently consider either of the primary theories of recovery advanced by the petitioner at trial and incorporated into the trial court's instructions to the jury: (1) the stop and detention of petitioner without probable cause to believe that he had violated any traffic law of the State of

Georgia; and (2) the interference with petitioner's efforts to secure immediate medical treatment at a nearby hospital for his elderly wife who lay dying of cancer in the backseat of his car and had lapsed into cardiogenic shock.

B. Facts

1. Medical Emergency of Petitioner's Wife

In the spring of 1980, petitioner's elderly wife (age 66) was terminally ill with cancer in the pericardium region of her body. Despite her condition, she continued living at home with her husband, who though 69 himself, was alert and fit enough to care for her. Early on the morning of May 24, 1980, petitioner was awakened by his wife. Her condition had apparently taken a significant turn for the worse. (A-28) Petitioner reached Dr. Eyzaguirre, his wife's physician, by telephone and described her "gasping" and the "bluish" color of her nails and lips.

(A-36) Dr. Eyzaguirre instructed petitioner to "rush" Mrs. Davis to St. Joseph's Hospital. (A-36) Because petitioner lived in a rural area which would make it difficult for an ambulance to find his house, he decided to drive his wife to the hospital in the family station wagon. (A-29) With the help of a neighbor, petitioner got his wife into the back seat. At that point, she had apparently lapsed into unconsciousness. (A-30)

2. Stop of Petitioner's Car En Route to Hospital

Petitioner left his house for St. Joseph's Hospital at approximately 6:15 a.m. on May 24. He drove with his emergency lights blinking. En route, petitioner passed a car, going in the opposite direction, driven by Officer Ramey of the City of Roswell Police Department. Officer Ramey turned his car around, followed petitioner's car for about 1.5 miles,

and then stopped it as it was about to enter a divided, limited access highway. The time was 6:25 a.m. The distance to the hospital from the point of the stop was between 8.2 and 8.5 miles.

The testimony about justification for the stop was in direct conflict. Officer Ramey said that petitioner was driving "erratically" (A-41); that petitioner crossed the centerline of the road illegally (A-22); and that when petitioner did so, he drove or almost drove his (Ramey's) oncoming car off the road. (A-22; A-23) Petitioner in contrast stated that he was not driving erratically; that he did not violate any traffic laws; and that he did not cause Ramey's car to go off the road or to swerve to avoid a collision. (A-22 to A-24) Petitioner was not charged with or convicted of any traffic violation arising from this episode. (A-21; A-25) Nevertheless, according to petitioner, Ramey stated flatly

that he could not leave the scene. (A-25) Ramey's version was that petitioner was not restricted in any way. (A-45 to A-48)[1] It is significant that Ramey's action in this regard was ratified when Ramey's shift supervisor, Officer J.B. Watson, came on the scene and assumed control of the situation. Watson testified that he would not have allowed Davis to leave. (A-49; A-50)

The jury was instructed on the constitutional standard under the Fourth Amendment for a valid arrest. (A-73 to A-76) It was also instructed to consider this standard in light of certain applicable traffic laws of the State of Georgia. (A-76) Insofar as

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[1] Ramey's testimony on this point is inconsistent. At one point, he said that petitioner was so upset, he was incapable of driving to the hospital safely. (A-47) Yet, moments later, he denied telling petitioner that he couldn't go. (A-47) Then Ramey testified that if petitioner had gotten back in his car and left, he "would have stood there." (A-48)

Ramey's liability for damages is concerned, Ramey received the benefit of a qualified immunity instruction (A-78) despite the fact that he did not plead immunity as an affirmative defense as required by Gomez v. Toledo, 446 U.S. 635 (1980). Petitioner argued to the jury that the stop of his car was illegal because Officer Ramey lacked probable cause to believe that a traffic violation had occurred.[2]

3. Interference With Petitioner's Right to Secure Medical Care for His Wife

According to petitioner, he explained to Ramey that he was taking his wife to the hospital and that it was a medical emergency. (A-25) Ramey testified that his immediate reaction was doubt (A-40), but he changed his mind after observing Mrs. Davis' condition as she law in the backseat of petitioner's car. (A-39) At

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[2]This segment of closing argument for the petitioner is not in the Appendix. This theory, of course, was pleaded in petitioner's complaint. (A-97)

that point, Ramey took over complete control of the situation. He called for assistance within three minutes of the stop and he received the following response: (1) his immediate supervisor, Officer J.B. Watson, arrived at around 6:30 a.m.; (2) the Roswell Volunteer Fire Department Rescue Squad arrived at 6:33 a.m.; and finally (3) an ambulance arrived at 6:38 a.m.[3]

According to petitioner's testimony, he asked Officer Ramey to provide an escort so that he could take his wife on to the hospital. (A-25) He was refused inasmuch as providing such an escort was against the policy (oral) of the Police Department of the City of Roswell. (A-60) Petitioner was also refused when he asked Ramey to take Mrs. Davis to the hospital in his patrol car. (A-25) This again was in keeping with departmental policy. Finally,

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[3]Apparently, a member of the rescue squad called the ambulance.

Officer Ramey made the judgment -- opposed vigorously by petitioner before the jury -- that the petitioner was unfit to drive his wife on to the hospital himself. (A-41; A-44 to A-46)

Apart from Officer Ramey's actions which were supported by his supervisor, Officer Watson, who was on the scene for most of this incident, there was evidence that the length of delay in getting Mrs. Davis to the hospital was due to policies of the Police Department. First, when, in the judgment of a City of Roswell officer a medical emergency existed, the first step was to call the rescue squad of the Volunteer Fire Department. (A-54; A-61) While the rescue squad was trained to administer emergency medical care to Mrs. Davis and did so, the squad was not licensed to transport anyone. (A-34; A-35) Consequently, Mrs. Davis had to be taken out of the rescue squad vehicle to which she had been moved initially

(A-31) and placed in the ambulance when it arrived minutes later -- 6:38 a.m. The ambulance records indicate that the ambulance was en route to the hospital by 6:47 a.m. and arrived there by 6:54 a.m. Thus, the jury could have found that the delay of 22 minutes -- between the time of the stop at 6:25 a.m. and the resumption of the trip to the hospital -- was entirely attributable to the intervention of Officers Ramey and Watson acting in furtherance of Police Department policy or practice.

Petitioner's primary argument to the jury was that this unwanted, unnecessary and unjustified intervention denied his personal right[4] to secure medical care for his wife. (A-65; A-68 to A-70) Moreover,

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[4]Petitioner was not seeking to recover for incompetent medical care which might have been given to his wife while she was stopped on the roadside. The theory was deprivation of petitioner's right to secure medical assistance for his wife.

the trial judge incorporated that theory into his instructions to the jury. (A-74) It is crucially important to keep the interference theory separate from the inadequate training issue.[5] Under that theory, petitioner claimed Mrs. Davis received incompetent and improper care during the stop and that the shortcomings were due to the City of Roswell's inadequate training of Officer Ramey.

Mrs. Davis' physician testified that she was in cardiogenic shock upon arrival at the hospital. He said that this condition was a factor in causing her death the next day at 12:45 p.m. In his view, time was of the essence in treating cardiogenic shock and a delay of 15 minutes to an hour in getting Mrs. Davis to the hospital could have been harmful.

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[5]It is noteworthy that the Georgia Supreme Court treated inadequate training as the sole issue in the case. (A-2)

4. Jury Verdict for Petitioner Taken Away

The jury verdict found that respondents Joyner and the City of Roswell had violated the civil rights of petitioner. (A-79; A-80) Officer Ramey was not held liable.[6] Compensatory damages were awarded to petitioner in the amount of $5,000 from Joyner and $250,000 from the City of Roswell. The trial judge, who during discussion outside the presence of the jury had expressed strong disagreement with section 1983 municipal liability under Monell (A-16; A-19), granted the respondents' motions for judgment n.o.v. and conditional order for a new trial in the event the judgment n.o.v. did not withstand appellate review.

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[6]Ramey also escaped liability for wrongful death as well.

C. Appeals Below

1. Court of Appeals of Georgia

After the trial judge granted respondents' motion for judgment n.o.v. and conditional order for new trial, petitioner appealed to the Court of Appeals of Georgia. Although that court reversed the judgment n.o.v., it left the trial judge's order for new trial intact. Davis v. Ramey, 174 Ga. App. 417, 330 S.E.2d 130 (1985). Although petitioner was grateful for another turn at the plate, the Court of Appeals took an unduly narrow view of the theories on which the case was tried.

To the Court of Appeals, the case involved a question of the deprivation of the wife's right to competent medical care. 330 S.E.2d at 132. While the case could have been litigated under section 1983 on that theory, it was not and for good reason. The inadequate medical treatment theory was encompassed within the state

wrongful death action which was a representative suit! (A-93 to A-107; A-71)[7] It sought recovery for the value of Mrs. Davis' life. The inadequate medical treatment theory was not replicated under section 1983 because Mrs. Davis was unconscious during the relevant events and therefore had little basis for anything but nominal damages. Petitioner, however, was acutely aware of what was happening to his wife during that short but agonizing period of delay on the side of the road. The issue was posed to the jury as the enfringement of petitioner's constitutionally protected right to give aid and comfort to his wife and to seek medical assistance for her during what he feared were the last hours of her life. (A-74) It was petitioner's grief and mental suffering for which the jury was asked to

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[7]The trial judge's wrongful death charge is not set out in the Appendix to this petition for certiorari.

give compensation. This point apparently was not understood by the Court of Appeals. Finally, the Court of Appeals did not mention the other key theory of recovery argued by petitioner to the jury: the stop and detention by Officer Ramey and shift supervisor, Officer J.B. Watson, were in violation of his Fourth Amendment rights.

This overly narrow conception of the issues did not prevent the Court of Appeals from overturning the trial court's grant of respondents' motion for judgment n.o.v. The harm, however, came in its consideration of petitioner's attack on the conditional order for new trial. The Court of Appeals summarily upheld that order relying on OCGA §5-5-50 which, in practice though not in theory, makes a trial judge's first grant of a new trial motion virtually unchallengeable on appeal. 330 S.E.2d at 132. Given the conclusory nature of the trial judge's order (A-12), it is impossible to tell what considerations

of justice demanded a new trial. Two notable errors in the jury instructions were to the detriment of petitioner not the respondents.[8] the evidence on the relevant legal issues -- properly viewed -- conflicted in some areas, but in others it heavily favored the petitioner.[9] Thus,

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[8]For example, in the qualified immunity instruction, the trial judge permitted the jury to find for Officer Ramey if he acted in subjective good faith even though a reasonable person would have concluded that Officer Ramey lacked probable cause to stop or detain petitioner. (A-78) In the instruction on interference with petitioner's right to secure medical care for his wife, the trial judge quoted the "deliberate indifference" standard initially and then said that petitioner could recover only if the respondents intentionally prevented him from getting medical care. (A-74)

[9]The major example would be evidence of the policies of the City of Roswell: (1) "officer discretion" to make the judgment whether a situation is a medical emergency (A-62); (2) no police escorts for persons in medical emergency situation to get them to hospital more rapidly (A-60); (3) no use of police cruisers to transport persons in medical emergency situation to hospital (A-25, A-60); and (4) practice of calling Rescue Squad to medical emergency situations even though it is not licensed to transport injured or seriously ill persons to hospitals (A-34, A-35, A-54, A-61). All of this evidence came from witness' aligned with respondents.

the jury's role was largely to make the necessary credibility determinations. One might expect that to be among the last functions where judges would be involved in second-guessing juries. But it was apparently done in this case and, under OCGA §5-5-50, it is proper as a matter of state law.

2. Supreme Court of Georgia

Petitioner filed a writ of certiorari to the Supreme Court of Georgia attempting to get review of the Court of Appeals' ruling permitting the order for new trial to stand. His certiorari petition was dismissed on May 1, 1985. (A-7) In the meantime, respondents asked the Supreme Court of Georgia to review the Court of Appeals' ruling taking away their judgment n.o.v. Their petition for certiorari was granted April 25, 1985.

The Supreme Court of Georgia held that the Court of Appeals erred in taking

away the respondents' judgment n.o.v. City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582 (1985). It perpetuated the mistake made by the Court of Appeals. In the very first sentence of the opinion, the Court defined the issue on review as involving "the alleged inadequate training of a police officer." 335 S.E.2d 582. That demonstrably was not the case. The inadequate medical treatment evidence was offered mainly on the state wrongful death claim to show that Officer Ramey's negligence caused the death of Mrs. Davis. The jury, however, found against petitioner on the death claim which was a representative action. Conceding that the jury was right on that question, petitioner argued with no evident effect that the jury was correct in its assessment of liability on the other issues: (1) his Fourth Amendment rights and (2) state interference with his right to secure medical care for his wife.

The Supreme Court of Georgia professed to have construed the evidence in a light most favorable to the petitioner. But, in fact, it reweighed the evidence on the Fourth Amendment issue. For example, Officer Ramey and the petitioner were in direct conflict on whether petitioner had violated any traffic laws. The jury apparently believed petitioner, not Officer Ramey. Yet, the Court concluded that the jury was wrong in finding that the stop and detention of petitioner were in violation of the Fourth Amendment. 335 S.E.2d at 586. In coming to this conclusion, the Court accepted "Davis' testimony that he was told he could not leave,"[10] 335 S.E.2d at 583, and then later rejected petitioner's denial that he violated any traffic laws.[11]

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[10] This finding makes the probable cause standard applicable.

[11] This testimony, if credited by the jury, would defeat respondents' claim that probable cause existed either to stop petitioner's car or to detain petitioner.

Here the Supreme Court of Georgia was functioning as a thirteenth juror, much as the trial judge had done. What other interpretation can be given to the observation that Officer Ramey "legitimately" stopped petitioner's car?

Finally, if there is any lingering doubt about the extent of the Supreme Court of Georgia's misconception of petitioner's section 1983 claims, consider the last sentence of the Court's opinion:

> Moreover, we make no decision here as to whether a person may maintain an action for violation of his spouse's civil rights, or whether a person's civil rights are violated when his spouse is harmed by the action of a police officer. 335 S.E.2d at 586.

If anything was made clear in this case, it was that petitioner sought to recover under section 1983 for the violation of his constitutional rights. This point was central. Moreover, it was the subject of

specific discussion just after the charge conference when counsel for petitioner stated on the record that petitioner was seeking recovery for interference with his efforts to get medical treatment for his wife. (A-65) He intended to forego any right to recover for the deprivation of his wife's constitutional rights. (A-65) Opposing counsel for respondents understood the point exactly. He qualified his agreement with petitioner's counsel by saying, "[Davis] has a right to pursue an alleged cause of action in that regard. I wouldn't necessarily concede that he has a cause of action in that regard." (A-65) In light of the record, the Georgia Supreme Court's decision to bypass this issue is inexplicable.

REASONS FOR GRANTING WRIT OF CERTIORARI

A. Introduction

A basic concern in our federal system is the respect afforded to federal law by the state courts. Nowhere should this concern be greater than when the enforcement of federal constitutional rights under section 1983 is at stake. Section 1983 actions are being brought in state courts with increasing frequency. Federal district court is no longer the unquestioned forum of choice. Though it appears that almost every state has now agreed to entertain section 1983 actions, it remains the case that state court familiarity with section 1983 issues is far less extensive than the federal judiciary's.[12]

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[12] These trends and issues are thoroughly canvassed in Steinglass, The Emerging State Court §1983 Action: A Procedural Review, 38 U. Miami L. Rev. 381 (1984).

Inherent in this situation is a risk -- perhaps transitional -- that section 1983 protections might not be fully realized in some state judicial systems. Quite apart from the occasional problem of hostility by individual judges to civil rights claims, there is a systemic concern as well: to what degree might state rules of practice and procedure undermine the enforcement of section 1983?

This case fits within that pattern. There are few Georgia appellate decisions interpreting section 1983. Municipal liability under the Monell decision requires the Georgia courts to enforce a form of liability that would not exist under state principles of municipal immunity. In some instances, adherence to Monell means that a local superior court judge would be faced with the difficult prospect of awarding damages and attorney's fees against the very governing body that finances his court. In this case, the

trial judge expressed precisely those concerns although he plainly succeeded in concealing them from the jury. But having done that, the trial judge then took the $255,000 jury verdict away from the petitioner. Bear in mind that petitioner did not get this case to the jury without a long struggle. Initially, this action was dismissed on the pleadings. Petitioner had to go through one appeal to get the case reinstated. Davis v. City of Roswell, 250 Ga. 8, 295 S.E.2d 17 (1982). Now petitioner has been forced to pursue a second round of appeals to try to regain his verdict or at least to get a new trial, neither of which he now has in light of the decisions of the Georgia appellate courts below.

B. Petitioner's Federally Protected Rights

In order for this petition to have substance, petitioner must show that when

the Georgia Supreme Court reinstated the judgment n.o.v. in favor of respondents it overlooked or perhaps did not adequately understand federal constitutional claims properly raised by the petitioner and supported by competent evidence at trial. Petitioner will show that two such claims were made. One involves a novel question; the other does not. If either was properly presented to the Georgia courts, then it would be necessary to address the final issue in this case: is there a minimum federal constitutional limitation on the power of a state court to take away a jury verdict when the right involved arises, as is true of actions brought under section 1983, under federal law?

1. Violation of Petitioner's Fourth Amendment Rights

Discussion of this point shall be brief. It is fundamental that Officer Ramey did not have the power to stop or detain the petitioner unless his action

met the applicable requirements of the Fourth Amendment. Bearing in mind that the Georgia Supreme Court found petitioner was not free to leave, City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582, 583 (1985), this Court may assume that an arrest or detention took place. The question becomes whether the issue of probable cause was presented to the jury and whether the petitioner introduced any credible evidence to support his contention that Officer Ramey had no reasonable basis for either the initial stop or the resulting detention.

An examination of the charge to the jury in this case discloses that petitioner's Fourth Amendment contentions were presented to the jury. Petitioner testified that he committed no traffic violations and denied causing Officer Ramey's patrol car to have to leave the road to avoid a collision. Moreover, petitioner testified that Officer Ramey

specifically told him that he could not leave the scene of the stop. The shift supervisor for the City of Roswell police department arrived at the scene just moments after the initial stop and he testified that he would not have allowed petitioner to leave. Finally, it is significant that no traffic violation charges were ever brought against petitioner based on this incident.

2. Interference With Petitioner's Right to Secure Medical Care for his Wife

The facts presented by petitioner undeniably establish that he was transporting his terminally ill wife to the hospital under order from her physician. Mrs. Davis was in a state of cardiogenic shock when she arrived at St. Joseph's hospital. As a result of the stop by Officer Ramey and the subsequent handling of the situation, she got to the hospital 15 to 20 minutes later than she otherwise

would have. This interference with petitioner's efforts was medically significant from the standpoint of time as Dr. Eyzaguirre testified. Finally, there is no dispute that petitioner became greatly distressed at not being able to drive on with his wife.

Was a constitutionally protected interest of the petitioner burdened or denied as a result of the actions taken by the respondents and their agents? The Supreme Court has made clear that traditional importance of the family unit gives rise to constitutionally protected interests. See, e.g., Santosky v. Kramer, 455 U.S. 745 (1982); Parham v. J.R., 442 U.S. 584 (1979); Moore v. City of East Cleveland, 431 U.S. 494 (1977); Griswold v. Connecticut, 381 U.S. 479 (1965); Pierce v. Society of Sisters, 268 U.S. 510 (1925). In brief, these cases hold that certain decisions within the framework of

the family are entitled to respect from the state and must be free of official interference. These cases protect sensitive aspects of the parent-child relationship, the husband-wife relationship and even encompass relations between members of the extended family.

Petitioner contended at trial that his right to secure medical care for his terminally ill wife comes within the zone of privacy associated with the marital relationship. Petitioner claimed a right to recover for the injury done to him as a result of the intrusion of the state at a crucial and emotionally trying point in his relationship with his wife. While Mrs. Davis, as the person in need of medical care, had a right of action against the respondents in this case, petitioner did not sue representatively on the §1983 claim. This Court, however, has never held that one family member can recover under section 1983 for damage to the

family unit because of injuries inflicted by the state on the person of another family member. This petition presents the issue.

A number of lower courts provide support for petitioner's position. See, e.g., Estate of Bailey v. County of York, 768 F.2d 503, 509 n. 7 (3rd Cir. 1985) (parent can sue for harm to child); Kelson v. City of Springfield, 767 F.2d 651, 654-655 (9th Cir. 1985))parent can sue under section 1983 for damages to relationship with child); Bell v. City of Milwaukee, 746 F.2d 1205, 1242-1245 (7th Cir. 1984) (parent-child relationship permits recovery; sibling relationship does not); Myres v. Rask, 602 F. Supp. 210 (D. Colo. 1985) (parent-child). Petitioner is aware of at least two decisions which implicitly would reject his theory of recovery. See White v. Talboys, 573 F. Supp. 49 (D. Colo. 1983)

(parent-child context); Jackson v. Marsh, 551 F. Supp. 1091 (D. Colo. 1982) (parent-child context). Interestingly, in a recent federal district court decision, the court held that a widow stated a cause of action under section 1983 when police carrying out a traffic stop interfered with her efforts to get her desperately ill husband to the hospital. The widow in that case, however, sued on behalf of her deceased husband and not for injuries which she may have suffered due to the breach of the marital relationship. Baldi v. City of Philadelphia, 609 F. Supp. 162 (E.D. Pa. 1985). The Baldi case is helpful for it indicates the actionability of respondents' conduct in this case, but the district court did not have to address who might be entitled to sue in a personal rather than a representive capacity.

Cases of the type that petitioner has brought are likely to increase in

number. There is great force to the idea that a husband has a due process liberty interest in a marriage relationship which he enjoys with his wife. How does one differentiate the spousal relationship from the interests in the parent-child cases where many courts have been quite receptive to due process claims? A clarification of the difficult questions in this area of constitutional family law would provide guidance to the lower courts in a developing area. Presently, the lower courts must draw inferences from Supreme Court decisions which point toward an outcome in cases like petitioner's but do not plainly settle the issue.

C. Underenforcement of Federal Law

Whenever state courts apply federal law, there is a concern about uniformity of enforcement. In this vein, it is well established that state procedural rules cannot be applied in a manner that would tend to undermine federal law. That concern ought to be at its greatest in state section 1983 cases given the historical background of the enactment of the Civil Rights Act of 1871. Petitioner urges this Court to determine whether the Georgia appellate courts applied the standards for judgment n.o.v. and the grant of a new trial in a manner inimical to petitioner's section 1983 rights.[13]

Petitioner has already suggested the theories on which his jury verdict might have been based. He has outlined

---

[13]Petitioner does not argue that the state standard in Georgia is in form a threat to federal rights. In practice, however, it was in this case.

briefly the relevant evidence in support of those theories. He suggests that the sufficiency of evidence to get a case to the jury is a federal question. Rogers v. Missouri Pacific R. Co., 352 U.S. 500, 506-507 (1957); Lavender v. Kurn, 327 U.S. 645, 652-653 (1946); Brady v. Southern Ry. Co., 320 U.S. 476, 479 (1943) ("[W]hen a state's jury system requires the court to determine the evidence to support a finding of a federal right to recover, the correctness of its ruling is a federal question."). Petitioner admits that his authority is limited to FELA and Jones Act cases, but he submits that the principle ought to be applicable to section 1983 cases as well. Professor Wright observes in his treatise that this federal test of sufficiency has been applied in a number of diversity cases. C. Wright, FEDERAL COURTS 643 (4th Ed. 1983). Petitioner believes that review of the decision to reinstate the trial court's

judgment n.o.v. for respondents is quite important to the uniformity with which state courts enforce section 1983 rights.

Petitioner maintains that the same is true with respect to the Georgia standard permitting a trial judge to grant a new trial the first time virtually without appellate review -- even when the order meets finality requirements for appellate consideration. The power possessed by a trial judge to force a civil rights litigant to endure a grueling, uphill struggle to prevail is enormous.[14] It, too, should be subject to minimum federal standards.

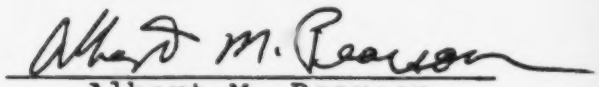
---

[14] Consider two federal cases in this regard. Anderson v. City of Atlanta, 778 F.2d 678 (11th Cir. 1985); Williams v. City of Valdosta, 689 F.2d 964 (11th Cir. 1982).

CONCLUSION

Petitioner respectfully asks that his petition be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

As a member of the Bar of the United States Supreme Court, I hereby certify that on this 18th day of February of 1986, three copies of the foregoing Petition for Writ of Certiorari were mailed, first-class, postage pre-paid to:

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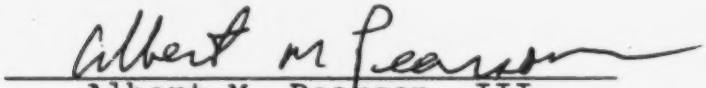

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85-1432

No. 86-

Supreme Court, U.S.
FILED
FEB 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term 1985

JAMES R. DAVIS, Petitioner

v.

CITY OF ROSWELL, GEORGIA and
T.L. JOYNER, Respondents

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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February, 1986

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CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta Nov. 19, 1985

The motion for a reconsideration was denied today: Case No. 42224, City of Roswell, et al. v. Davis.

Smith, J., dissents

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

CITY OF ROSWELL, et al.

v.

DAVIS

No. 42224

Supreme Court of Georgia

Oct. 30, 1985

HILL, Chief Justice.

This is a civil rights case, involving the alleged inadequate training of a police officer, here on certiorari. Davis v. Ramey, 174 Ga. App. 417, 330 S.E.2d 130 (1985). On the morning of May 24, 1980, James Roy Davis was transporting his critically ill wife to the hospital when he was stopped by Roswell police officer Michael Douglas Ramey. Davis subsequently sued officer Ramey, the City of Roswell, and its chief of police, T.L. Joyner, alleging, inter alia, that his civil rights, protected by 42 U.S.C. §1983, had been violated.

At the time of the incident, Ramey had been on the Roswell police force for three months. Prior to joining the force, he had

taken 60 hours of basic first aid at Lanier Tech in 1975, which was updated when he was in the Army in 1979. He had also been a deputy sheriff with the Forsyth County Sheriff's Department for four months in 1978. His training for the Roswell police force had consisted of riding with a senior officer for three weeks. He testified that his training for handling an emergency consisted of being told "to stay calm, to use my best judgment and immediately request a supervisor who had the training and the knowledge to handle the situation." While he did not mention having been instructed how to call the rescue squad or an ambulance, he apparently had been taught how to do so since in fact he did call both. Testimony by the supervisor who was called to the scene and by the chief of police established that at the time of the incident, the city trained its police by having them ride with a senior officer until he made a written recommendation that they could go on patrol alone, and by sending them to the

police academy as soon as possible -- i.e., whenever a new class started -- and within twelve months of their employment. See OCGA §35-8-9(a).

At the trial, Davis testified that when he was stopped he was driving safely and had not violated any traffic laws. When asked if he was having any trouble keeping his car under control he responded in the negative and then added: "Except when I hit that rough place down there where I met him. The station wagons, anybody that ever drove one will know that when you hit a rough place they will sway with you." Ramey testified that he initially stopped Davis because as the two cars passed each other, going in opposite directions, Davis crossed the center line and he had to drive the patrol car onto the shoulder of the road. Having stopped Davis, Ramey asked to see Davis' driver's license and then asked what the problem was. Davis responded that his wife was sick and Ramey observed that she was lying stomach down on the back seat. She was very pale,

and he was unable to feel a pulse in her carotid artery. He testified that he used a radio he had in his pocket to summon a rescue vehicle, an ambulance, and a supervisor. According to Davis, Ramey went back to his car to radio for assistance.

Davis contends that he asked to be allowed to go on to the hospital and asked Ramey to lead him there, and Ramey told him he could not leave the scene. Although Ramey testified that he never told Davis he could not leave, and that he told Davis that he was not capable of driving to the hospital and that help was on the way, we accept Davis' testimony that he was told he could not leave. Ramey further testified that he chose not to transport Mrs. Davis to the hospital in his own car because he did not want to move her and because he did not have any medical emergency equipment. Davis testified that the hospital was 8.2 miles away, according to Ramey it was approximately 8.42 miles away.

Davis had alleged in his complaint that he and his wife were detained for approximately 20 minutes before Ramey called for any medical assistance, and that when he did call for medical assistance he summoned only the emergency rescue squad of the Roswell volunteer fire department. He alleged that the rescue squad called for an ambulance, and approximately 30 more minutes elapsed before it arrived.[1] He presented no evidence in support of these allegations at the trial. When asked, "About how long did it feel like to you before somebody from the

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[1]This case came before this court previously when Davis appealed from an order of the trial court granting the city's motion for judgment on the pleadings. The city contended that Davis was seeking to hold it liable for negligent operation of its police force or on a respondeat superior theory. We agreed with the city that it could not "be held liable under 42 USCA §1983 solely on negligence or respondeat superior theories." Davis v. City of Roswell, 250 Ga. 8, 9, 295 S.E.2d 317 (1982). But we reversed the grant of the city's motion for judgment on the pleadings, referring to 42 U.S.C. §1983 and holding that: "It appears that Davis may be entitled to relief under some state of facts involving the City of Roswell . . . ." Id. at 9, 295 S.E.2d 317.

fire department got there?", he responded, "I don't know; probably fifteen or twenty minutes." He also stated that he did not know how long it was before the ambulance arrived, but it seemed like a long time. No evidence was introduced to dispute Ramey's testimony that he had called both the rescue squad and the ambulance, and had called them simultaneously.

Ramey testified that he stopped Davis at 6:25 a.m. The police department records show that the dispatcher received Ramey's call that he was making the stop at 6:25 a.m., and they show 6:47 as the time of completion. The records of the Roswell Fire Department show that the rescue squad was dispatched at 6:29, arrived at 6:33 and completed the assignment at 6:47.[2] The records of the ambulance company show that the call was re-

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[2]One fire department document, the incident report, gives the time of dispatch as 6:29 and then gives the time of arrival as 6:23. That apparently should have read 6:33. It also gives the time dismissed as 6:53; the EMT explained that that was when he completed the report and left the scene, which was after the ambulance had left.

ceived at 6:28, the ambulance was dispatched at 6:29, arrived at 6:38, was en route to the hospital at 6:47, and arrived there at 6:54. In addition, Ramey testified that after he called for the rescue squad and an ambulance, he radioed for his supervisor and for a backup patrol car. According to Ramey, the supervisor arrived within a minute and a half. The supervisor testified that he began proceeding to the scene when he heard Ramey call for medical help, and that it took him 2-3 minutes to get there. The transcript is not entirely clear, but it appears that the backup patrol car arrived next. Then the rescue squad vehicle, driven by an EMT arrived; the driver testified that at that point he was a student EMT, having had 40 hours of training. As he got out of the truck, two other EMT's arrived. Of those two, only one, the one who took charge, testified. He testified that he had been as-

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[3]This is consistent with Davis' testimony that two police cars arrived before the rescue squad arrived.

sociated with the Roswell Fire Department since 1974 as a volunteer, that at the time of the incident he was a volunteer fireman and paramedic; that he had had 120 hours of basic EMP training and another 150-60 hours of cardiac technician training; and that he was at that time employed as a paramedic and ambulance driver by Metro Ambulance Service. The EMT's moved Mrs. Davis from her car to the rescue truck; sat her up and tilted her head back to clear her airway; administered oxygen; monitored her vital signes; and communicated her conditions to the hospital. When the ambulance arrived, Mrs. Davis was transferred to it and taken to the hospital.

Davis called his next door neighbor, Jean Abt, as a witness. Ms. Abt testified that Davis had called her at approximately 5:45 a.m. and asked her to come over. She dressed and arrived in 5 or 10 minutes. Mrs. Davis was seated in the living room she did not look well and said she did not feel well. After calling Mrs. Davis' doctor,they decided they would take Mrs. Davis to the hospital and Ms. Abt went

home for a jacket; The walk took 3-4 minutes. By the time she came back, Mr. Davis was trying to get his wife into the car. Ms. Abt testified that the thought Mrs. Davis was still unconscious, but she was not positive. She also testified that the "guessed" that it was 6:15 or 6:20 when they left the Davis' house. Davis testified that it was 4 miles from his house to where he was stopped.

During Abt's testimony, she was asked if she recalled having given a statement earlier in which she said: "The officer came to verify the fact that Mrs. Davis was in the car and apparently she was ill, and when he did this he told Mr. Davis he should wait for the emergency vehicle or wait for the ambulance." She verified that statement. She also stated: "My impression was that after we were stopped he ascertained that there was an ill person in the car and that he moved quickly to call for help.

Mrs. Davis' doctor's deposition was admitted into evidence. He testified that he

had first seen her on May 1, 1980; that she was suffering from cancer of the lung and of the membrane around the heart; that the cancer had also spread to her brain and her kidneys; that when she was discharged from the hospital on May 18, 1980, her condition had improved with regard to her shortness of breath, progressive cough and general malaise, but the prognossi was very poor and guarded. He testified that according to his records she was admitted to the hospital at 6:48 a.m. on May 24; that he examined her at the hospital later that day; and that she died on May 25, 1980, at 12:45 p.m. He also testified that one of the factors which caused her death was cardiogenic shock, that time is of the essence in treatment of cardiogenic shock, and that a delay of 15 minutes to an hour of getting her to the hospital would have been harmful to her.

After the defendant's motions for directed verdicts were overruled, the jury returned a verdict for the defendants on Davis' wrong-

ful death claim. As to his civil rights claim, the verdict form queried: "Do you find that either of the defendants [officer Ramey, Chief Joyner, and the City of Roswell] violated the civil rights of the plaintiff?" The jury answered: "Yes." The next question read: "If the answer to the above question is 'Yes,' which defendant or defendants do you find liable?" The jury answered, "T.L. Joyner" and "City of Roswell." They jury went on to award as compensatory damages $5,000 against Joyner and $250,000 against the City.[4]

Defendants Joyner and the City of Roswell then filed a motion for judgment not-withstanding the verdict or, in the alternative, for a new trial. The trial court granted j.n.o.v., stating: "The Court, despite a diligent review of the record, has been unable to find

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[4]No issue is raised as to whether different amounts may be awarded as damages against different defendants. See McKinnon v. City of Berwyn, 750 F.2d 1383, 1387 (7th Cir. 1984).

any evidence that defendant Ramey acted improperly or that his actions violated the Plaintiff's civil rights. Further the Court has been unable to find any evidence that either Defendant City of Roswell or Defendant Terry L. Joyner established or ratified a policy or took any other action sufficient to impose liability upon them under 42 USC §1983 . . . ." On appeal, in a split decision, the Court of Appeals reversed, finding that the evidence was conflicting. Davis v. Ramey, 174 Ga. App. 417, 330 S.E.2d 130 (1985). We granted certiorari to determine in this developing area of law "Whether the facts of this case are sufficient, as a matter of law, to impose liability under 42 USC §1983."

Having reviewed the evidence and construing it in plaintiff's favor, we nevertheless agree with the trial court that the evidence does not establish, in the first instance, that officer Ramey acted improperly or violated the plaintiff's civil rights. Although there are some variances in the evi-

dence, as the Court of Appeals noted, the pertinent evidence is, in fact, remarkably consistent. Ramey maintains he stopped the car because it was being driven erratically. Davis maintains that he had control of his car, except for its "swaying" as he passed the patrol car. Contrary to the allegations in his complaint, Davis admits that after Ramey saw Mrs. Davis he radioed for help; the only difference is that Davis says Ramey used his car radio and Ramey says he used one in his pocket. Davis, professing no certainty, thinks it was 15-20 minutes before the rescue squad arrived. He does not venture a guess as to how long it was before the ambulance arrived. On the other hand, he thought it was about 6:20 when he was stopped and his wife's doctor testified that she reached the hospital, which was over 8 miles away, at 6:48. Except for this testimony, which places her arrival earlier than any of the other records do, the records are consistent with themselves and with Ramey's testimony.

In sum, what the evidence as a whole shows is that a police officer legitimately stopped a car only to discover that it bore a critically ill woman. He then decided that, rather than allow the driver to proceed or to transport Mrs. Davis in his patrol car, the better course of action was to call for emergency help to render aid and for an ambulance to transport the patient to the hospital, which was over 8 miles away. In addition, he called a supervising officer to the scene as he had been instructed to do.

A conflict in the evidence, however, is created by Davis' testimony that it was "probably fifteen or twenty minutes" before the rescue squad arrived and then "a long time" before the ambulance arrived. But this conflict relates to the response time of the support services, not to the acts of the officer who called them. Liability was not predicated on the response time of these personnel but on alleged inadequate training because of which the officer allegedly mis-

handled the emergency. There is no evidence that the officer should have anticipated that the response time would be so extended, if it was, as to make a call for help an inappropriate choice.

Furthermore, even assuming that the evidence suffices to show an official policy of inadequate training in handling medical emergencies, more is required. Davis bore the burden of showing not only the existence of an official policy of inadequate medical emergency training, but also a causal connection between the policy and the constitutional deprivation. City of Oklahoma City v. Tuttle, ___ U.S. ___, 105 S. Ct. 2427, 85 L.Ed.2d 791 (1985). Assuming that Davis established that the City of Roswell consciously chose an inadequate training program (i.e., time on supervised patrol) such inadequacy was ameliorated by the requirement that when confronted with an emergency, the officer call a supervisor to the scene and the undisputed evidence here is that the supervising officer arrived within

three minutes. The supervising officer testified that he had been trained at the Northeast Georgia Police Academy and was a certified law enforcement officer, and no attempt was made to establish that his training was inadequate. Therefore, even if the evidence were sufficient to establish that Ramey was inadequately trained as a result of an official policy sufficient to invoke liability under 42 U.S.C. §1983, the causal link was broken by the supervisor's virtually immediate arrival at the scene.

We conclude that the trial court ruled correctly when it granted the defendants' motion for j.n.o.v. The standard for granting a motion for j.n.o.v. and for directing a verdict are the same: "If there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, shall demand a particular verdict, such verdict shall be directed." OCGA §9-11-50(a); Pendley v. Pendley, 251 Ga. 30(1), 302 S.E.2d 554 (1983).

This standard is met in this case; there is no conflict in the evidence as to any material issue and the evidence, with all reasonable deductions therefrom, demanded a verdict in favor of the City and its chief of police. We find that the evidence did not establish that a "policy" of inadequate training sufficient to support liability under 42 U.S.C. §1983 was the cause of the harm suffered by Davis. In so ruling, we note that there is some doubt as to whether such a cause of action exists. See the recent decision in City of Oklahoma City v. Tuttle, ___ U.S. ___, ___ n. 7, 105 S. Ct. 2427, 2436 n. 7, 85 L.Ed.2d 791 (1985).

Moreover, we make no decision here as to whether a person may maintain an action for violation of his spouse's civil rights, or whether a person's civil rights are violated when his spouse is harmed by the action of a police officer.

Judgment reversed.

All the Justices concur, except SMITH, J., who dissents.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta 5/8/85

Case No. 42307, Davis v. City of Roswell, et al.

The Supreme Court today dismissed the petition for certiorari in this case. All the justices concur.

Please see Rule 28.

Very truly yours,

JOLINE B. WILLIAMS, Clerk

DAVIS

v.

RAMEY et al.

No. 69630

Court of Appeals of Georgia

March 14, 1985

Rehearing Denied March 29, 1985

Certiorari Granted April 25, 1985

Certiorari Dismissed May 1, 1985

SOGNIER, Judge.

James R. Davis brought this action for wrongful death of his wife and deprivation of her civil rights under 42 U.S.C. §1983 against Robert Ramey, a Roswell City policeman, T.L. Joyner, the Roswell City Police Chief, and the City of Roswell (Roswell). In Davis v. City of Roswell, 250 Ga. 8, 295 S.E.2d 317 (1982), the Supreme Court reversed the trial court's grant of judgment on the pleadings to Roswell. On remand, the case was tried before a jury which rendered a verdict

in favor of all defendants on the wrongful death count, and in favor of Ramey but against Joyner and Roswell on the civil rights claim. Davis appeals from the trial court's grant of motions for j.n.o.v. and a new trial to Joyner and Roswell, and the trial court's denial of Davis' motion for attorney fees under 42 U.S.C. §1988.

[1] 1. Appellant contends that the trial court erred by granting appellees' motion for j.n.o.v. because there was sufficient evidence to support the jury's verdict against Joyner and Roswell for violating his wife's federal civil rights by denying her medical care. Davis, supra at (1), 295 S.E.2d 317. To prevail on his civil rights claim, appellant was required to prove that his wife was deprived of a constitutional right by a person acting under color of state law in implementing "an intentional policy, adopted or ratified by the governing

body of a public agency . . . . Such a policy may be formal or informal, acknowleged or vigorously denied, persistent or intermittent, or implemented by but one single act." City of Cave Spring v. Mason, 252 Ga. 3, 4-5, 310 S.E.2d 892 (1984). The denial or improvident delay of needed medical care may constitute a deprivation of constitutional due process. Davis, supra, 250 Ga. at 8, 9(1), 295 S.E.2d 317; Fitzke v. Shappell, 468 F.2d 1072 (6th Cir. 1972), Hughes v. Noble, 295 F.2d 495 (5th Cir. 1961).

[2] The evidence adduced at trial shows that Ramey, while acting in the scope of his employment as a Roswell City Police officer, stopped appellant who was driving his critically ill wife to the hospital. Evidence concerning the reasons for the stop was contradictory. Ramey testified that he stopped appellant because appellant's car crossed over the

centerline as Ramey was traveling in the opposite direction, running Ramey off the road. Appellant testified that he was driving properly at all times. Ramey did not arrest appellant or charge him with any traffic violation. Appellant informed Ramey of his wife's critical condition and that he was on his way to the hospital where her doctors were waiting to treat her. Ramey determined that appellant was not in a condition to proceed on his own but declined to provide appellant with an escort to the hospital. Instead Ramey called his supervisor and the Roswell Volunteer Fire Department emergency squad. An ambulance called by the emergency squad eventually arrived and transported appellate's wife to the hospital. Appellant's wife died the following day.

The evidence was conflicting whether policy existed regarding police procedure for handling medical emergencies and

if so, whether Ramey followed that policy. It is uncontroverted that Ramey's only training from the Roswell Police Department had consisted of three weeks of riding with a senior police officer. There was sufficient evidence based on the testimony of police chief Joyner and others to support a finding that the Roswell Police Department provided no training to its officers to handle predictable medical emergency situations but had a deliberate policy of "officer discretion" under such circumstances, resulting in this case in a wrongful delay of necessary medical attention in violation of 42 U.S.C. §1983. See Davis, supra at 8-9(1), 295 S.E.2d 317.

[3,4] In reviewing the grant of judgment n.o.v. we must view the evidence in the light most favorable to the party who secured the verdict and determine whether the evidence demanded the j.n.o.v. or whether there was some evidence to sup-

port the jury's verdict. Bryant v. Colvin, 160 Ga. App. 442, 444, 287 S.E.2d 238 (1981); Pendley v. Pendley, 251 Ga. 30, 31, 302 S.E.2d 554 (1983). A j.n.o.v. is improperly granted where there is conflicting evidence. Bryant, supra, 160 Ga. App. at 444, 287 S.E.2d 238; Pendley, supra, 251 Ga. at 31, 302 S.E.2d 554. The evidence in this case was conflicting and we cannot say that a verdict was demanded for appellees. Therefore, the trial court erred by granting j.n.o.v. Bryant, supra, 160 Ga. App. at 445, 287 S.E.2d 238.

[5] 2. Appellant contends the trial court erred by granting appellees' motion for new trial conditional on this court's vacating or reversing the trial court's j.n.o.v. "The first grant of a new trial shall not be disturbed by an appellate court unless the appellant shows that the judge abused his discretion in granting it and that thelaw and facts require the

verdict notwithstanding the judgment of the presiding judge." OCGA §5-5-50. Appellant has shown neither abuse of the trial court's discretion nor legal and factual circumstances dictating judgment in his favor, and we therefore find no error in the trial court's grant of appellees' motion for new trial. Hicks v. American Interstate Ins. Co., 158 Ga. App. 220, 225(2), 279 S.E.2d 517 (1981).

[6] 3. Appellant contends the trial court erred by failing to allow into evidence a letter written to Joyner by an attorney who had represented appellant in legal matters and who also acted as the Roswell city attorney. The letter, offerred as evidence of its contents, constituted inadmissible hearsay. See OCGA §24-3-1; Newport Timber Corp. v. Floyd, 247 Ga. 535, 541(3), 277 S.E.2d 646 (1981). Appellant's argument that the letter was admissible as an exception

to the hearsay rule either as an admission by appellees' agent or as a business record is not supported by the evidence. We therefore find no merit in this enumeration.

[7,8] 4. Appellant contends the trial court erred by denying his motion for attorney fees under 42 U.S.C. §1988, the Civil Rights Attorney's Fees Awards Act of 1976. A plaintiff must be a prevailing party in order to recover attorney fees under 42 U.S.C. §1988. Hensley v. Eckerhart, 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed.2d 40 (1983); Hanrahan v. Hampton, 446 U.S. 754, 756, 100 St. Ct. 1987, 1988, 64 L.Ed.2d 670 (1980). Appellant has not prevailed on any of his claims at this point for the purposes of shifting counsel fees to the opposing party under 42 U.S.C. §1988. Hanrahan, at 446 U.S. 759, 100 S. Ct. at 1990. Therefore, the trial court did not err in denying appellant's motion for

attorney fees.

Judgment affirmed in part; reversed in part.

BANKE, C.J., McMURRAY and BIRDSONG, P.J.J., and CARLEY and BENHAM, J.J., concur.

DEEN, P.J., and POPE and BEASLEY, J.J., dissent.

DEEN, Presiding Judge, dissenting in part.

In order to impose liability upon the City of Roswell under 42 U.S.C. §1983, three requirements must be met.

(1) The city intentionally and deliberately instituted or authorized a policy or custom;

(2) Which was corrupt or impermissible; and

(3) Which "caused" Officer Ramey to violate the plaintiff's constitutional rights. Monell v. Dept. of Social Services, 436 U.S. 568, 98 S. Ct. 2018, 52 L.Ed.2d 611 (1978); Davis v. City of

Roswell, 250 Ga. 8, 295 S.E.2d 317 (1982); City of Cave Spring v. Mason, 252 Ga. 3, 310 S.E.2d 892 (1984).

The trial judge, after reviewing the record, stated that he was "unable to find any evidence that Defendant Ramey acted improperly or that his actions violated the Plaintiff's civil rights. Further, the Court has been unable to find any evidence that either Defendant City of Roswell or Defendant Terry L. Joyner established or ratified a policy or took any other action sufficient to impose liability upon them under 42 U.S.C. §1983."

We have reviewed the evidence and conclude that the trial court did not err in granting the defendant's motion for judgment notwithstanding the verdict.

While by hindsight the policy of "officer discretion" as to emergency medical situations might have dictated that the officer escort the appellant to

the hospital, we can say as a matter of law and fact that the City's policy, and the evidence in this case as to the acts performed by the officer, were not so unreasonable as to impose liability. I would affirm the judgment of the trial court.

I am authorized to state that Judge POPE and Judge BEASLEY join in this dissent.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

JAMES R. DAVIS, Individually and as next best friend of GETNA W. DAVIS, Plaintiff	*	
vs.	*	CIVIL ACTION
MICHAEL DOUGLAS RAMEY, T.L. JOYNER, and the CITY OF ROSWELL, a Municipal Corporation, Defendants	*	FILE NO. C-74749

O R D E R

The Defendants' Motion for Judgment Notwithstanding the Verdict and New Trial and the Plaintiff's Motion for Attorneys' Fees under 42 U.S.C. §1988 having come on for hearing on April 12 and April 13, 1984, pursuant to notice and agreement by counsel, and the Court having thoroughly reviewed the record, the briefs filed and case law cited by the parties, and heard the argument of

counsel and set forth on the record the basis of its decision regarding these issues, it is hereby

ORDERED AND ADJUDGED:

(1) That the Judgment in favor of the Plaintiff, entered by the Court on or about March 16, 1984, is vacated;

(2) That the Defendants' Motion for Judgment Notwithstanding the Verdict is hereby granted. The Court, despite a diligent review of the record, has been unable to find any evidence that Defendant Ramey acted improperly or that his actions violated the Plaintiff's civil rights. Further, the Court has been unable to find any evidence that either Defendant City of Roswell or Defendant Terry L. Joyner established or ratified a policy or took any other action sufficient to impose liability upon them under 42 U.S.C. §1983;

(3) That if the above Judgment Notwithstanding the Verdict is vacated or reversed,

the Defendants' Motion for New Trial is then granted on the ground that the Court finds the verdict to be inconsistent, improper and illegal and on the ground that, in the Court's opinion, the verdict is excessive and against the weight of the evidence;

(4) That the Plaintiff's Motion for Attorneys' Fees under 42 U.S.C. §1988 is denied. The Court finds that the Plaintiff is not entitled to such fees under the evidence presented at trial.

SO ORDERED this ____ day of _____, 1984.

_____
GEORGE B. CULPEPPER, III
Senior Judge, Superior
Courts of Georgia

EXCERPTS FROM TRIAL TRANSCRIPT

Note: This portion of the appendix contains selected passages from the trial transcript. The passages are set out thematically as the section headings indicate. Specific page and volume numbers accompany each reference. To avoid an unreasonably lengthy appendix, every effort has been made to keep these references brief. Petitioner acknowledges that in some instances the context is not fully evident. He does not think this makes these references misleading or undercuts their utility to the Court.

A. Trial Court Hostility to Section 1983 Actions Against Municipalities

1. By Hardwick, Attorney for Petitioner; Volume I, pp. 236-237:

Mr. Hardwick: In this particular incident, there has been testimony from almost all of the witnesses, police officer, supervisor. E.M.T. and whatever, that the policy was to call Roswell Fire

Department and ask for an ambulance, irregardless of the situation. You have the supervisor who was directly over the Defendant Ramey who testified that even if he was aware of doctors orders, he would still call the ambulance service; that that was the accepted custom. Now, I realize the court has already expressed some dissent over the civil rights law making cities liable, but this is the only way that we can hold the cities accountable and the only way the cities will change their policy. And this was all policy. The Supreme Court has already ruled in numerous cases, beginning with Monnell, that it doesn't have to be a written etched-in-stone policy. That's way they say: custom, practice or procedure. This was a custom or a practice or a procedure that was known and in use. It was known by the officer. It was known by the supervisor. It was approved

of by his Chief of Police. And those are the people that create and establish the policy and custom.

Now, this particular policy is what directly led to the interference. In this case we've got several policies that the city has. First was the policy that you don't transport the inmates or patients -- (respite)

The Court: Go ahead.

Mr. Hardwick: First was the policy that the police officers were not allowed to transport patients to the hospital. That is the policy testified to by Officer Ramey and by Captain Watson. The second policy is the policy of the city that the E.M.T.S and the Roswell Emergency Fire Department does not transport patients to the hospital, irregardless [sic] of medical condition.

The third policy is the policy that irregardless or doctor's orders or whatever, police officers call the Roswell

Volunteer Fire Department. The fourth policy is the lack of policy, so to speak, of training, of supervision. There is sufficient evidence, in compliance with the directions set forth by the Georgia Supreme Court in this decision, for the jury to find that what happened to Mr. Davis and to Getna Davis was the direct and proximate results of established custom or procedure of the City of Roswell.

I might also point out, Your Honor, and again call your attention to the order from the [Georgia] Supreme Court, where the Supreme Court itself says that if there was intentional interference with the medical, with the medical treatment of plaintiff, the City of Roswell would be liable.

Mr. Boyle: I don't think that's what the decision says.

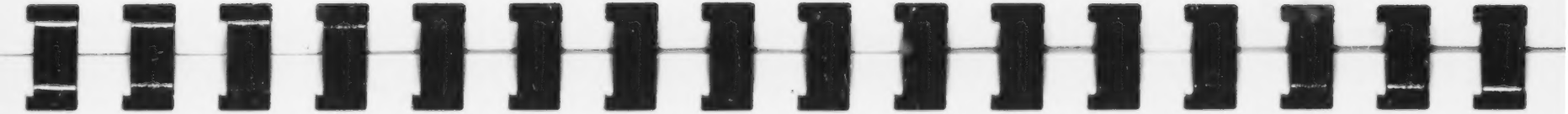
2. By the Court; Volume II, p. 4:

The Court: Now I want to put one other thing in the record. I have indicated to Mr. Hardwick that I was not too happy with this type of action but as far as the Court knows, the Court has done nothing in the trial of the case to in any way convey that thought to the jury.

Mr. Hardwick: And Mr. Hardwick will agree with the Court.

The Court: If there has been something like that, I want you to call it to my attention now because I would certainly like to do what I could to disabuse the jury of an idea like that. But as far as I know, I have done nothing to indicate that.

Mr. Hardwick: Your Honor -- and this is not in an effort to garner any points -- but the Court has been more than fair to both sides.



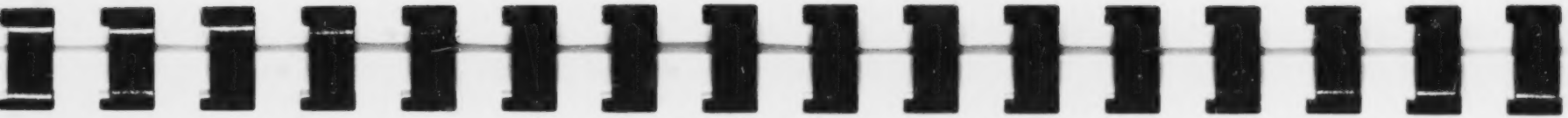
The Court: I always hope that that's right anyway.

B. Testimony Supporting Claim that Davis and His Wife Were Illegally Detained

1. By Stipulation; Vol. I, pp. 3-4:

Mr. Hardwick: Ladies and Gentlemen, these statements I'm about to read, as you have heard from the Bench, are undisputed facts that Plaintiff will not have to burden you with by calling expert witnesses, because they are accepted as being true on their face.

The undisputed facts are that the Defendant, Michael Douglas Ramey, was acting in the scope of his employment as a police officer for the City of Roswell during the incident that is the subject matter of this litigation; that on the 24th day of May, 1980, Michael Douglas Ramey, while operating a police vehicle for the City of Roswell, did stop the Plaintiff, James R. Davis, at the inter-



section of Holcomb Bridge Road and the entrance ramp of Georgia Four Hundred.

The Plaintiff, James R. Davis, informed the Defendant, Michael Ramey, that the Plaintiff was carrying his wife Getna Davis to the hospital; that the Defendant, Michael Douglas Ramey, nor any other member of the Roswell Police Department, issued a traffic citation to the Plaintiff, nor was Plaintiff charged with any violation of any laws for any acts done in connection with the alleged incident that is the subject matter of this litigation; that the Roswell Police Department Volunteer Fire Department Emergency Rescue Squad was called to the scene; that Getna Davis was transported to the St. Joseph's Hospital by Metro Ambulance Service;

That Getna Davis died on the 25th day of May, 1980, at approximately 12:45 a.m.; that Getna Davis was the wife of

James R. Davis on the date of the incident complained of in this complaint; that T.L. Joyner was the Chief of Police of the City of Roswell Police Department on the date of the incident complained of.

Those are the only undisputed statements of fact between Plaintiff and the Defendant, and with that we'll call our first witness. Mr. Davis, take the stand, please.

2. By Davis; Vol. I, pp. 14-18:

Q. [By Mr. Hardwick] Roy, you have heard Mr. Webb say in his opening statement that you forced the Roswell Police car off the road. Did you in fact do that?

A. No sir, I don't think so. In fact, I know not.

Q. Did you even come close to the Roswell Police car?

A. No sir. The only time I was across the line is when I passed that volkswagen bus up there at the store.

Q. Did you have your emergency flashers on?

A. Yes, sir.

Q. About how fast were you going when you passed the police officer?

A. Average speed, about 40, 45 miles an hour.

Q. About how fast were you going when you got behind that volkswagen bus?

A. Well, I had to slow down to about 20 miles an hour because he just didn't make any time going up that hill.

Q. Other than when you passed the volkswagen bus, did you pass the center line at any time?

A. Not until I turned down on the ramp to Four Hundred.

Q. When were you first aware of the fact that the police officer was follow-

ing you?

A. When Mrs. ABT told me.

Q. Do you remember approximately where on this photograph it was?

A. No -- just before he turned his light on there.

Q. Where would that be?

A. Between the Seven Eleven and the bridge.

Q. Once he turned his blue light on, what did you do?

A. I went ahead and made my turn down the ramp and stopped.

Q. Did you get out of your car?

A. Yes, sir.

Q. Police Officer get out of his?

A. Yes, sir, I believe so.

Q. Did you go back to the police car?

A. Yes, sir.

Q. Say anything to the officer?

A. Yes, sir.

Q. What did you say?

A. I told him my wife was in critical condition in the back seat of my car and I was on my way to St. Joseph's Hospital, the doctors were waiting on her. And I asked him if he could lead me on down there, and he said I can't do that. And I asked him to let me go and he said I can't do that either.

Q. Did you ask him to do anyting other than let you go to the hospital?

A. No, sir.

Q. And did you ask him to let you go to the hospital?

A. Yes, sir.

Q. And what did he say?

A. Said I can't let you go.

Q. Did he tell you why he couldn't let you go?

A. No, sir.

Q. Did he tell you you had violated any laws?

A. No.

Q. Did he render any assistance to you or did he tell you anything?

A. No, sir. He went back to his car and got on the radio and in about five minutes there was two more police cars, and all of them with the blue lights running like I had robbed a bank or something. And me sitting there with my wife in critical condition, with me trying to get her to the hospital, and I couldn't move.

Q. You say you couldn't move. Why?

A. That man with the authority to tell me I can't go, tells me that and I can't go.

Q. Have you ever been arrested before in your life?

Mr. Webb: Objection, Your Honor that has no relevance in this case at all.

Mr. Hardwick: Your Honor, it shows conduct, respect for authority and whatever.

Mr. Webb: We'll stipulate Mr. Davis has the utmost respect for authority. I don't have any interest in his criminal background, if he has one.

The Court: Let me ask you, have you ever been arrested before?

The Witness: One time in Chattanooga for getting blinded one night.

By Mr. Hardwick:

Q. When a police officer tells you to do something, you generally do it then?

A. That's right.

Q. You did ask Officer Ramey to let you go?

A. Yes, sir.

Q. And his response?

A. He said, no, I can't let you go.

C. Testimony Supporting Claim of Interference With Davis' Right to Secure Prompt Medical Care For His Wife From Her Personal Physician

1. By Davis; Vol. I, pp. 9-10:

By Mr. Hardwick:

Q. So, Getna was home on May 23rd?

A. Yes, sir, going for treatment.

Q. Would you tell us her general condition on May 23rd?

A. She was doing fine. We went out to lunch in Roswell on our way back and went on home, and she rested that afternoon and we retired about 9:00 that night and there was no problem.

Q. When did you first have a problem again, from the 23rd on?

A. About somewhere around 5:00 a.m. on the 24th, she woke me up and said I got to get up. And see, she got up and went in the living room and I got up and dressed and went in there and turned on the light and she was just as white as a sheet, piece of white paper or whatever. So, I in turn called the doctor and waited a few minutes. Didn't get no answer, and I called another doctor and he told me

to rush her right in to St. Joseph's Hospital and he would have emergency waiting.

Q. Which doctor did you call first?

A. Doctor Brown.

Q. Why did you call Dr. Brown?

A. Well, he was a surgeon. And I don't know, really. Him and Doctor Eyzaguirre both were treating her, so I called him. But he was in surgery and couldn't answer and I called Doctor Eyzaguirre and he called emergency and told me to get her [Mrs. Davis] to the hospital as quick as I could. And my neighbor wanted to call the ambulance, like Mr. Webb said, and I told them no I will be in the hospital before they can even find me because I live on a back road and it would have took them a hour to find where I lived. And so I put her in my station wagon and started to the hospital with her.

Q. Now at that point in time, what is Gretna's position?

A. When I put her in the station wagon -- I toted her out of the house and put her in the station wagon -- she was unconscious.

Q. Did anybody help you to put her in the car and go with you?

A. Mrs. ABT went. When she left for her house to get something, I stayed with her and I put her in the station wagon and Mrs. ABT came with us and she stayed in the back with her and I drove.

Q. Who is Mrs. ABT?

A. My neighbor.

2. By Davis, Vol. I, pp. 16-17: (See quoted material in B-2 at A-25 and A-26)

3. By Spencer, Volunteer Fireman for the City of Roswell; Vol. I, pp. 105-108:

Q. Did anybody tell you that that car was enroute to St. Joseph's Hospital when it was stopped?

A. When it was stopped?

Q. Yes, sir.

A. No, sir.

Q. Did anybody tell you that the lady's doctor had ordered her to be transported to the hospital as soon as possible?

A. No. sir.

Q. Did anybody with Roswell Police Department give you any information about the lady's situation?

A. I don't recall speaking to any police officer.

Q. What did you do then?

A. I believe we rolled the lady over on her back so we could secure her airway where she could breathe a little bit better. Because any time you have anyone laying on their face it's very hard for them to breathe. We rolled the lady over on her back and opened her airway so she could breathe, and I believe Gresham got the stretcher and we loaded her on the stretcher and put her in the back of the ambulance. Excuse me -- put her in the

back of the rescue truck.

Q. What happened when she got in the back of the rescue truck?

A. I proceeded to try to obtain a blood pressure, pulse and respirations on her. It appeared she was having difficulty breathing, so we administered oxygen to her.

Q. Mr. Spencer, at any time while you were doing all of this, did anybody point out Mr. Davis as the lady's husband?

A. No sir. I never seen Mr. Davis there. As I said before, when I go to scene I don't look around to see who all is there. I try to take care of the patient.

Q. Well, if the police department did not give you any medical information about him and if nobody pointed out Mr. Davis to you, where did you get the medical information from to answer these questions you said you asked?

A. That's part of the training. If you can't get answers you have to look for things yourself. I never said that I never got answers to any questions.

Q. Would it be a fair statement to simply say you took charge of her for treatment and did what you felt should be done?

A. I done whatever I had tried to do.

Q. Have you ever been trained to render emergency treatment for persons with blood clots or embolisms?

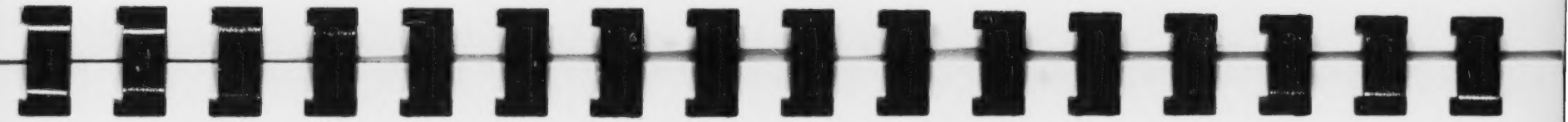
A. That's hard to determine in the field. A basic E.M.T. cannot determine whether anyone has embolism or blood clot.

Q. Can you?

A. No, sir.

Q. Is it true that Mrs. Davis was passing blood clots or embolisms at the time you were rendering treatment?

A. I have no idea.



Q. After you took charge of Mrs. Davis' treatment and put her in the back of the emergency vehicle, if Mr. Davis came to that vehicle and said I'm taking my wife to the hospital and made an effort to take her, would you have let him?

A. Yes, sir.

Q. Why didn't you take her to the hospital?

A. The rescue department is not licensed to transport victims. At that time an ambulance was dispatched and was on the way out to the scene.

Q. That vehicle is physically capable of transporting patients; isn't that correct?

A. Yes, it was capable of transporting. We were not licensed by the state to do any type of transporting. We are a rescue service, not an ambulance service.

Q. And since it's a volunteer fire department, whose responsibility is it

to get the license?

A. Chief of the department.

Q. Under no circumstances would you have taken somebody to the hospital in May of 19 and 80?

A. No sir, I didn't have authority to do that.

Q. No matter what the condition of the patient at the time you arrived on the scene, you would not have transported the person immediately to the hospital?

A. At that scene there, no I wouldn't; because the ambulance was enroute.

Q. No, sir. My question was: under any circumstances?

A. No sir I didn't have the authority to transport anybody to the hospital.

4. By Dr. Eyzaguirre; Vol. I, pp. 123-125:

Q. Prior to her [Mrs. Davis] being admitted in the hospital had you had any contact with Mr. or Mrs. Davis on 5/24?

A. I did have a telephone call from him through my answering service, letting me know that Mrs. Davis was beginning to have acute shortness of breath and progressive deterioration of her condition.

Q. And what did you instruct Mr. Davis to do?

A. He told me that the lady was gasping and was bluish in her lips and nails and, of course, I knew what was going on right then. I told him to rush her to St. Jospeh's emergency room.

Q. You say you knew what was going on. What was in fact going on, Doctor?

A. Since I knew the patient had the cancer into the pericardium, I knew the patient's spreading was continuing. At that point the patient probably was accumulating fluid in the lungs and pericardium and whatnot, producing and spreading into the brain, which previously we had already found out that

she had -- that it was spreading.

Q. Was there any indication of shock? Did Mr. Davis relate any indication that the patient was either going into shock or --

A. No, none. I don't think he has enough, you may call it, intuition to look for that, but he made a statement that she turned for the worse.

Q. You told him to do what?

A. To rush her to St. Joseph's hospital.

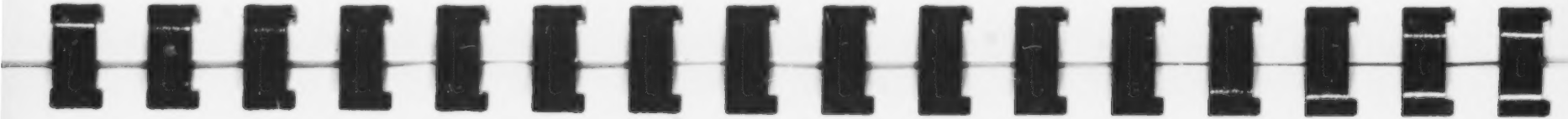
Q. Did you also call St. Joseph's hospital that night?

A. Yes.

Q. And what did you say?

A. We alerted, as we always do, that the patient was going to St. Joseph's hospital.

Q. Did you prescribe any treatment or any manner of treatment for the emergency room to give Mrs. Davis when she got there?



A. No. What we do is, in this case -- a telephone call doesn't tell us what is going on. It tells us about the emergency situation but he doesn't say what is going on. The way we work it is that the emergency room in the hospital, we have a full-time physician there for, with all of the qualifications for taking care of the emergencies. As soon as he does the assessment, he calls us back. This is how all the hospitals work. We feel this is the best way to serve the patients in a right way.

Q. Would it be a correct statement to say you did tell Mr. Davis to get his wife to St. Joseph's hospital and you did call St. Joseph's and put them on notice?

A. Yes.

5. By Ramey; Vol. I, pp. 148-150:

Q. Did you call the supervisor before or after you discovered Mrs. Davis was ill in the back seat of her car?

A. No. What we do is, in this case -- a telephone call doesn't tell us what is going on. It tells us about the emergency situation but he doesn't say what is going on. The way we work it is that the emergency room in the hospital, we have a full-time physician there for, with all of the qualifications for taking care of the emergencies. As soon as he does the assessment, he calls us back. This is how all the hospitals work. We feel this is the best way to serve the patients in a right way.

Q. Would it be a correct statement to say you did tell Mr. Davis to get his wife to St. Joseph's hospital and you did call St. Joseph's and put them on notice?

A. Yes.

5. By Ramey; Vol. I, pp. 148-150:

Q. Did you call the supervisor before or after you discovered Mrs. Davis was ill in the back seat of her car?

A. As soon as I discovered Mrs. Davis ill in the back seat of the car, I first called for the rescue and ambulance and then I requested for a supervisor and a backup unit.

Q. Mr. Ramey, was there any question in your mind when you checked out Mrs. Davis that she was ill?

A. No sir; there was no question.

Q. Was there any question in your mind that Mr. Davis may have been lying to you when he said the doctor told him to get her to the hospital?

A. I was never instructed by Mr. Davis that the doctor had told him to come to the hospital.

Q. Did Mr. Davis tell you he was going to the hospital?

A. The only statements Mr. Davis made on that particular morning was: I've got to get to the hospital.

Q. Well, was there any doubt in your mind he was lying to you when he said that?

A. I had my doubts. I had no reason at that time -- when the statement was made, I had no reason to believe him. I had no probable cause why he should be going to the hospital.

Q. You just said you checked out Mrs. Davis?

A. Yes, sir, I did. But his statements were made prior to me checking Mrs. Davis.

Q. How long, prior to your checking his statement?

A. A matter of seconds.

Q. So, after you checked his statement did you have any reason to believe he was lying to you?

A. As soon as I looked in the back of the car, No, sir; I did not.

Q. Y'all were stopped at the entrance of Georgia Four Hundred; is that correct?

A. On the south-bound ramp; yes, sir.

Q. St. Joseph's hospital is approximately 8.42 miles south of that; correct?

A. Yes, sir.

Q. And it's all divided expressway until you get right to the end?

A. That's correct.

Q. Early in the morning hours?

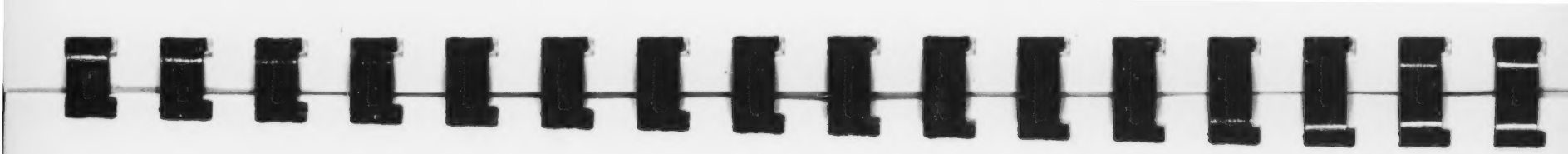
A. Yes, sir.

Q. No traffic, by previous testimony?

A. No traffic.

Q. If Mr. Davis had told you he had to get to the hospital and you had verified the condition of his wife, why didn't you let him go to the hospital?

A. Having observed Mr. Davis' erratic driving, I did not feel, having sworn to protect and serve the public, that he was in any condition to continue the trip further.



6. By Ramey; Vol. I, pp. 158-162:

Q. And then you had a short conversation with Mr. Davis?

A. I asked Mr. Davis for his driver's license.

Q. Did he give you his driver's license?

A. At that precise moment; no sir.

Q. What did he do?

A. He stated he had to go to the hospital.

Q. Then what?

A. I asked for his license again, the second time.

Q. And did he give it to you the second time?

A. Yes, sir; he did.

Q. Did you take the time to examine the driver's license?

A. I took time to see what the gentleman's name was.

Q. Did you ask him why he had to go to the hospital?

A. As soon as I had obtained his license and knew who I was doing business with, I then asked him what the problem was.

Q. But you weren't concerned with the problem until he got round to giving you the driver's license?

A. No, sir; I was not.

Q. So, after he gave you the driver's license and you had time to examine it, decide what his name was, then what did you do.

A. I'm sorry, sir. I didn't have to decide, it's written there.

Q. Well, what did you do after you examined the driver's license?

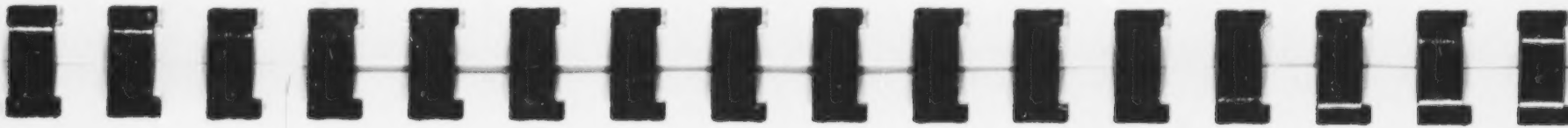
A. Well, I then asked Mr. Davis what was the problem.

Q. And what did he tell you?

A. His reply was that his wife was sick.

Q. And then what?

A. I immediately went to the Davis vehicle where I observed Mrs. Davis



lying, stomach down, on the back seat.

Q. Was there more than one occupant in the car when you got there?

A. Yes, sir.

Q. Who all was in the car?

A. Mrs. ABT. At that time she was unknown to me.

Q. How was Mrs. ABT in the car, seated, standing up or --

A. No, she appeared to be on the floorboard, trying to work with Mrs. Davis.

Q. What did you do then, after you observed this scene?

A. When I saw Mrs. Davis, she was very pale. Since she was on her stomach, I could not detect a rise and fall of the chest. I tried for her carotid artery but I could not get a pulse. If she had a pulse, it was extremely weak and it was at that point that I requested a rescue and ambulance and supervisor.

Q. You requested that while you were in the Davis car trying to get the pulse?

A. Right there; yes, sir.

Q. Did you have a radio in your pocket?

A. Yes, sir; I did.

Q. So, you didn't have to go back to your patrol car?

A. No, sir; I did not.

Q. While you were waiting on Sergeant Watson, ambulance, paramedics and everything else, what did you do?

A. I kept close check on Mrs. Davis.

Q. How did you keep close check on Mrs. Davis?

A. By observing her condition. I couldn't tell if it worsened. There was nothing, really, I could do.

Q. Well, did you ever talk to Mr. Davis to ask him what the problem was?

A. No sir. Mr. Davis was too upset.

Q. You say Mr. Davis was upset. Would you tell us what you mean. What

was his mannerisms that made you believe he was upset?

A. He was very loud, boisterous. He kept repeating that someone would pay for his being detained on the side of the road. So, I tried to talk with him about the situation but there was no response.

Q. Mr. Davis was loud and boisterous?

A. Yes.

Q. Was he trying to go? Was he asking you to let him get to the hospital?

A. He never asked, sir. He stated simply: I have got to go to the hospital.

Q. Did you ever tell him he couldn't go?

A. No, sir. I stated that help was on its way.

Q. Did you tell Mr. Davis that you couldn't let him go when you pulled him over and he asked you to let him go to the hospital?

A. I told Mr. Davis that under his -- from what I had observed of his driving, that he was in no way, in my judgment, capable of making it to the hospital. He not only had his life in the car but also his wife and that of the third passenger.

Q. Mr. Ramey, did you ever use the words: I can't let you go, or you cannot go?

A. No, sir; I did not use those words.

Q. Did you ever prevent Mr. Davis from getting back in his car?

A. No, sir; I did not.

Q. He made no effort, he didn't ask you at all, could he go?

A. There was no question ever asked could he go. The statement was simply made: I have got to go to the hospital.

Q. And you never once told him he could go?

A. I didn't tell him he could go and I didn't tell him he couldn't go.

Q. If he had got back in the car, what would you have done?

A. I guess I would have stood there.

D. Testimony Establishing Policy and Custom of City of Roswell

1. By Watson; Vol. I, pp. 192-202:

Q. At any time from the point that you arrived to the point that you cleared the scene, did you ever talk to Mr. Davis?

A. Not that I recall.

Q. Did you ever attempt to try to reason with him?

A. Well, I never had any conversation with him so I didn't have any need to reason with him.

Q. Did you ever talk with Officer Ramey?

A. Not that I recall.

Q. Do you remember seeing Mr. Davis at that scene?

A. No, sir; I don't.

Q. Do you remember seeing Miss Jean ABT there, the lady in the back of the car?

A. I remember a lady being there that was later identified as a neighbor and I assumed that was who it was.

Q. Did anybody at any time tell you that Mr. Davis was enroute to the hospital and that was his wife that y'all were treating?

A. It's possible that Officer Ramey told me that when I first arrived. When he advised me that -- I think it was Officer Ramey that advised me that she had heart condition.

Q. Did he [Officer Ramey] advise you that Mr. Davis was enroute to the hospital?

A. I can't recall.

Q. If Mr. Ramey had advised you that she was enroute to the hospital, would that have affected in any way the way that you carried out your duties as supervisor that night?

A. No, sir.

Q. You would not have allowed Mr. Davis to proceed?

A. I was never -- that was never a question asked of me, if he could leave.

Q. Sir, you were the supervisor; were you not?

A. Yes, sir.

Q. Had he asked you, if Mr. Davis had wanted to leave the scene and continue on to the hospital with his wife, would you have let him?

A. More than likely I would have had him wait until the EMTs arrived and let them make that decision rather than me.

Q. After the incident was over, did you have occasion to review the incident with Officer Ramey?

A. I don't know if we reviewed it anymore than any casual conversation. I don't recall.

Q. How long had Officer Ramey been assigned to your watch before this in-

cident?

A. I don't know. I don't remember if he -- I knew he had been on, on training about three months. I don't know if he came straight to my shift or if he started on another one and then was assigned to mine.

Q. Captain, I'll ask you to assume, unless I indicate otherwise, that Officer Ramey worked for you prior to the Davis incident and up to the Davis incident.

A. Okay.

Q. Was Mr. Ramey assigned to your shift during all this time.

A. Yes, sir.

Q. Did you conduct any training classes or anything like that for Mr. Ramey?

A. I don't recall. I know at one point when Ramey was employed, we had our -- when set up an orientation program for new officers and I don't re-

call the dates of it. It might have been in April, which was prior to this incident.

Q. What is an orientation program?

A. It's something that we, within the Police Department, had designed or laid out in order to train some of the new officers in the way that, or all the new officers that we had at that time in the way we fill out reports and orient them to our city courts and city ordinances and things of that nature.

Q. It was purely a paperwork-type situation, where to get the forms and how to get to the courthouse?

A. Well, there was some training I recall involving traffic stops and also building searches.

Q. Prior to the Davis incident, did you ever give Officer Ramey, you personally, any training or instructions on what to do in the type of emergency that he came upon on the morning of May 24th?

A. I couldn't say that I gave him any particular instructions. However, he responded in getting medical attention or calling for medical attention to the scene.

Q. That wasn't my question sir. Did you ever give him any training on what to do?

A. Not in that particular situation, no.

Q. Is there any standard operating procedure for the City of Roswell that was in effect on the day of May 24th, the date of the Davis incident, concerning what to do in this situation by a patrol officer?

A. You mean a written standard operating procedure.

Q. Yes, sir?

A. There is nothing in writing, no.

Q. Well, is there any standard that you pass on orally from officer to officer?

A. In a situation where you have somebody that's injured or obviously sick that you call for an ambulance and rescue.

Q. And is it your testimony that it was a standard operating practice, custom or procedure of the Roswell Police Department on the date that Mr. Davis' incident occurred to call for the Roswell Volunteer Fire Department and an ambulance when you come across somebody that's on the way to the hospital?

A. It's in a particular -- in a situation like this, yes.

Q. And in reviewing Officer Ramey's conduct at the scene, and as his supervisor, was his conduct and the manner in which he carried out the stop within the policy, custom practice or procedure of the City of Roswell policy that is in effect at that time?

A. As far as I know, yes.

Q. Did you cite him for any violations

of policy?

A. No, sir.

Q. Did you write him up for any violation?

A. No, sir.

Q. Did you make complaints to your superiors about any violation of policy?

A. No, sir.

Q. Did you go, did you conduct any investigation whatsoever in reference to the complaint of Mr. Davis? I'm not talking about the laws, I'm talking about the complaint that was filed with the police department.

A. I never was contacted, in reference to doing any investigation, by the Chief or anybody who happened to be doing an investigation.

Q. Was it -- again I'll say that all the questions about policy and everything else pertaining to this incident, pertain to back in 1980, the time of the Davis incident and before. Was it stan-

dard policy back then to have new officers patrolling in single patrol cars?

A. After they had gone through some period of time riding with a seasoned officer, yes.

Q. What period of time would that be, sir?

A. In some case cases it might have been two weeks or in some cases it might have been longer.

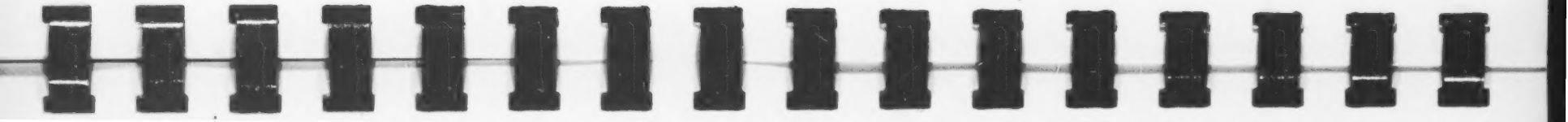
Q. The absolute minimum was two weeks? They had to put in at least two weeks?

A. Well, to my knowledge, there was no minimum on it.

Q. What if they put in only forty-eight hours?

A. There was nothing in writing that said it would be otherwise.

Q. And then they were put in these patrol cars, they are fully equipped, as I understand it; they are issued a uniform, badge, gun, the whole thing?



A. Yes, sir.

Q. About how long do you leave these young patrolmen on the streets before you send them to police academy?

A. We generally try to get them into the police academy as soon as possible, whenever the next academy date comes up.

Q. That could be anywhere up to twelve months; is that correct?

A. I think the state law allows it to be up to twelve months.

Q. During this period of time, from the time you hire a police officer to the time you send him off to school, is it standard practice to let him go out and patrol the streets by himself with just a suprvisor in another car?

A. I don't understand your question. You are saying with the supervisor in the car with him?

Q. No, sir. As in the case of Mr. Ramey, he was the sole or loan [sic] patrolman in the car working under a supervisor

such as yourself but you were in a totally separate car.

A. It was at that time, yes.

Q. Again, back in the eighties, did Roswell, through you as the supervisor, conduct any periodic training whatsoever of these young officers?

A. None, other than that one-week long orientation class that we had.

Q. Did anybody ever bother to at least teach him what an arrest was?

A. That was another of the topics covered in the orientation class that we had, but they received no actual formal and recorded training. No.

Q. Did you ever explain to the officers under your supervision that when a police officer detains somebody and prevents his movement, that's an arrest?

Mr. Webb: Objection your honor. That's a very --

The Court: I sustain the objection.

Mr. Hardwick: I apologize to the Court. Your Honor, if the court will give me just a second.

(Pause)

By Mr. Hardwick:

Q. Captain Watson, again, back during the eighties, was there any policy of the City of Roswell that would have prevented you from using your police cruiser to take Mrs. Davis to the hospital?

A. No, sir; there was no written policy.

Q. Is there a different policy, as from written policy and custom and so forth, of your knowledge? Was there anything, oral or written custom, or any other way, of the City that would would have prevented you from using your police cruiser to take Mrs. Davis to the hospital?

A. There was to my knowledge an oral policy that we couldn't use our police vehicles to transport patients.

Q. And that policy was in effect at the time of the Davis incident?

A. Yes, sir.

The Court: Now, when you say that, are you talking about a policy regarding an emergency situation or just an accommodation to take somebody to the hospital that wants to go? What are you talking about?

The Witness: I'm talking about an emergency situation.

By Mr. Hardwick:

Q. If, when you arrived on the scene at Four Hundred a little after 6:00 a.m. Saturday morning, Four Hundred staring you in the face and just eight miles down the road is a hospital, if Officer Ramey or Mr. Davis or anybody else had told you that Mrs. Davis was critically ill and that her doctor had said get

here to St. Joseph's Hospital as soon as possible would you have put Mrs. Davis in your police cruiser and taken her?

Mr. Webb: Objection to the form of the question. This is his witness and as his witness that's a leading question, and contains facts not in evidence and is otherwise improper in calling for speculation.

The Court: Well, I don't know whether the officer can answer the question or not. If he can answer it, I really don't see any objection to his answering it -- if he can answer it.

The Witness: No, sir; I would call rescue.

Mr. Hardwick: That's all the questions I have of this witness, Your Honor.

Mr. Webb: I have just a couple of questions.

CROSS-EXAMINATION

By Mr. Boyle:

Q. Captain Watson, if view of your testimony, I am foggy as to what the custom is. I understand it's the custom in the City of Roswell when you find somebody sick or injured you call for an ambulance. Is that correct?

A. Yes, sir; if their injury warrants being transferred to a medical facility.

Q. Under the particular facts that Officer Ramey found on the morning of the 24th, his dealing with that situation, there is no set policy in the City of Roswell in that regard, is there?

A. No, sir.

Q. That was left to his discretion, wasn't it?

A. Yes, sir.

Q. Thank you, Captain.

REDIRECT EXAMINATION

By Mr. Hardwick:

Q. Just one question, Captain. You said if their injury warrants. Who determines what injury warrants transportation to a hospital or ambulance? I'm sorry. Strike that. You testified you would call an ambulance if the injury warrants it. Who determines if the injury warrants an ambulance?

A. Generally, the way our system is set up, generally the officers and the EMTs arrive on the scene approximately the same time and in these cases we leave it for the emergency medical technicians. If the officers can see -- in my personal case, if I see somebody that their injury involves severe bleeding or something that is beyond -- if they appear seriously sick or seriously injured, just from what I know of looking at people, I would call an ambulance.

Q. Is that written policy or is that -- is there some written check list or policy of the city that says if the patient is suffering these symptoms --

A. No, sir.

Q. It's all left to the officer's discretion?

A. Yes, sir.

Q. If you arrive on the scene and that person is under doctor's orders or doctor's care, would the doctor's orders prevail or would you still call the volunteer fire department?

A. I would still call the fire department.

2. By Spencer; Vol. I, pp. 107-108: (See quoted material in C-3 at A-30 through A-35)

E. Theories of Recovery Argued on Behalf of Davis

1. By Hardwick; Vol. I, pp. 236-237: (See quoted material in A-1 at A-15 through A-18)

2. By Hardwick; Vol. II, p. 3:

Mr. Hardwick: Let the record reflect that during the charge conference it was agreed between plaintiff and defendant that in exchange for the plaintiff's not pursuing any separate cause of action for Getna Davis, 1983 action, that the plaintiff recognizes that the defendant, James R. Davis, has a cause of action for interference with medical treatment, in trying to get medical treatment for his wife, Getna Davis.

Is that what we said?

Mr. Webb: He has a right to pursue an alleged cause of action in that regard. I wouldn't necessarily concede that he has a cause of action in that regard. I think other than that, that is an accurate statement of what it was.

3. By Hardwick; Vol. II, pp. 11-15:

One of the burdens the plaintiff has in a civil rights case is that we have to prove a little bit more than we do in a normal case. In this type case we have to prove not only that Mr. Davis was harmed, that he suffered an injury of some sort, but that the injury resulted in a deprivation of one of his federally guaranteed constitutional rights. And if that isn't a long enough mouthful, we also have to go forward, before we can hold the city liable, and prove that this deprivation of a right was the direct result of either a policy, custom, practice or procedure that was in effect by the City of Roswell, in this case Roswell Police Department or Fire Department. Remember that the City of Roswell is a defendant.

I submit to you that Mr. Davis suffered more than just a simple deprivation of due process and the Court will

explain to you what I mean by due process and what the law is applicable to this circumstance. I submit to you that everything that happened to Roy Davis on the morning of May 25th, May 24th, there at that intersection of Holcomb Bridge Road with Georgia 300, was a result of policies, customs and practices by the City of Roswell, and all of these were in effect at the time of the action at the incident there at Georgia 400.

First, as we go through these, ask yourselves, please, what kind of a city is this that would have these kinds of policies? What kind of city puts armed policemen on the streets, alone in a patrol car, with no training to handle emergency situations, with no training whatsoever except having ridden with a senior officer -- and nobody told you how senior that would be -- for a couple of weeks? What kind of city

forbids its police officers from taking an injured person to a hospital? We had the testimony of three officers; R...ey, Watson, Joyner that it's against the city policy to transport an injured person in your police car to the hospital.

What kind of city relies solely on volunteer firemen, a volunteer fire department as their emergency first aid source? What kind of situation is that? Their policy, they hire their police department and they could hire their firemen. They could at least hire E.M.T.s if they are going to require the police department to call these E.M.T.s in every emergency. Doesn't it make sense, at least make sense to assure that they at least have one on call?

What kind of city buys an emergency vehicle and requires its police force to call for this vehicle but then doesn't bother to get a license so it can take ill or injured people to the hospital

doesn't even bother equipping it? What kind of a city allows and approves of a policy of its police officers of intentionally interfering with people trying to take their loved ones and their family members to the hospital, that approves intentionally interfering with doctors' orders?

You had testimony of Captain Watson. At the very time of the incident he was only a sergeant and was Mr. Ramey's supervisor. He is not a watch commander and he's a captain and he is probably a fine gentleman. He told you unequivocably that he didn't care what the situation was. If he got on the scene and it was an injured person, he would not let them go; he would detain them until the Roswell Volunteer Emergency Fire Department Rescue, whatever, got on the scene. He would detain them even if they were under doctor's care.

I don't think even the city would stand here today and tell you that an E.M.T. is supposed to take precedence over a doctor.

Something else that Mr. Webb commented on in his opening comments was that he brought up the situation in Texas that occurred last week and said this has nothing to do with that case, two entirely different cases, situations. And I submit to you it's frighteningly similar. You have here a policy of complete indifference by the city management.

You had Mr. Al Temples testify before you. He's the city councilman directly responsible for the police department and also on the Police Board of the City of Roswell. He testified that he nor any city councilman ever got involved in the policies of the police, of the police department's training of the police department or anything to do with the police department except filling

out vacancies. We have some young policemen hired, given a badge and a revolver, put in a big police cruiser and told to go protect and serve. That's a lot of power. It's a lot of authority. Unfortunately, the city doesn't bother or foresee the need to train these people so they can handle that authority properly.

F. Jury Charge On Section 1983 Theories, Vol. II, pp. 65-71:

Now, after you have considered that part of the case, that is Mr. Davis' claim for damages for the death of Mrs. Davis, you would go further and regardless of what your findings are in that particular case and consider the remaining claim that Mr. Davis has presented in this case. The federal law provides that any individual may seek redress in this Court by way of money damages against any person or persons who, under color of state law, deprives that individual of his or her constitutional

rights. If you should find from a preponderance of the evidence that the Defendant Ramey acted beyond the bounds of his lawful authority under the state law at the time and place alleged, then you may further find that the defendant did, without due process of law, deprive the plaintiff of liberties secured to him by the Constitution and the laws of the United States.

The fact that the Defendant Ramey had no specific intent or purpose to deprive the plaintiff of his civil rights will not absolve him from liability if he did in fact deprive him of those rights. The same would be true insofar as Defendant T.L. Joyner and the City of Roswell is concerned. Acts are done under color of law of a state when state officials act within the limits of their lawful authority. But acts are also done under color of law when state officials act outside the limits of their lawful au-

thority while pretending to act in the performance of their official duties; that is to say, it is an unlawful act for an official to abuse or misuse the power which he has been given as an official.

And it is an unlawful act under color of law if the act could only have been done by an official exercising his powers outside the bounds of his lawful authority. The phrase, "Under color of law," applies to acts done under color of any state law or county or city ordinance, or any regulation issued under a state law or ordinance or acts done under any state or local custom.

I charge you that the Fourth Amendment of the Constitution of the United States of America provides for the right of people to be secure in their persons, houses and papers from unreasonable searches and seizures.

The plaintiff claims that he was denied adequate medical care for his wife subsequent to his arrest. The deliberate indifference to serious medical needs of persons violates the right to due process of law. Thus, if you find the defendants were aware of the fact that Getna Davis was seriously in need of medical attention and the defendants intentionally failed to provide access to medical personnel, or intentionally delayed such access, or if you find that the defendants intentionally failed to cooperate with medical personnel who did see Getna W. Davis, then you shall find that the defendants were liable for a violation of plaintiff's constitutional rights in this regard.

I charge you that false imprisonment may constitute a violation of civil rights. False imprisonment consists in the unlawful detention of the person of another for any length of time whereby

he is deprived of his personal liberty and furnishes a right of action for damages to the person so detained. The only essential elements of the action being the detention and its unlawfulness, malice and the want of probable cause not being necessary.

Ladies and gentlemen, I charge you that detention is made whenever someone is taken, seized or detained by any means which indicate an intention to take him into custody and which subjects him to the control and will of the person making the detention. It is not necessary that the person arrested or detained actually be seized or even touched and no formal words of arrest need be spoken. It is sufficient if the person understands that he or she is under the control of the person making the arrest and submits to that control. Even when the person arrested is allowed considerable freedom of

movement, the detention is complete; provided his movements are at the discretion of the person making the detention, the arrest.

I charge you that where one has been imprisoned falsely, no other damage is necessary to be shown. The law presumes damage.

I charge you certain statutes of this state which read as follows: I charge you that no person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing.

I charge you that the law of Georgia requires that upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except under certain defined circumstances, none of which are applicable to this case.

I charge you that if you find Michael Douglas Ramey observed the plaintiff violating a traffic ordinance, he had the right to stop and arrest the plaintiff.

I charge you that if you find the plaintiff, James R. Davis, had proved that Officer Ramey deprived him of federally guaranteed rights while acting in the execution of the City of Roswell's policy or custom, whether made by its lawmakers or those whose edicts may fairly be said to represent official policy, liability may be imposed upon the City of Roswell.

I charge you that if you find that the plaintiff has proven that Officer Ramey deprived him of federally guaranteed rights while in the execution of a policy which had been established by Chief Terry L. Joyner or that he directed, ordered or participated in Officer Ramey's actions, then you would

be authorized to find against Chief Joyner.

I charge you that a police officer is protected from liability if he acted under a good faith belief that the action taken by him is proper and reasonable.

I charge you that if you find that Michael Douglas Ramey reasonably believed in good faith that his stop and detention of Mr. Davis was constitutional, then he may not be held liable under the civil rights statute, even if you conclude that the stop and detention was in fact without probable cause and unconstitutional. The burden of proof regarding good faith is on the defendant in this situation. Therefore, you may only find in that defendant's favor regarding good faith if you find that the preponderance of the evidence you have heard supports that defense.

G. Jury Verdict, Vol. II, pp. 81-82:

The Court: Be seated, please. Let me have the verdict. (Pause)

Mr. Foreman, have you arrived at a verdict?

The Jury Foreman: Yes, we did, Your Honor.

The Court: Madam Clerk, I'll let you read the verdict.

The Clerk: In the Superior Court of Fulton County, State of Georgia, Civil Action C-74749; James R. Davis, Getna Davis, plaintiffs, versus Robert Ramey, T.L. Joyner, City of Roswell, defendants. Verdict: We, the jury find as to question one: Do you find for the plaintiff and against the defendant Ramey on the plaintiff's claim for the wrongful death of Getna Davis? No.

Question two: Do you find that either of the defendants violated the civil rights of the plaintiff. Yes. If the answer to the above question is yes, which defen-

dant or defendants do you find liable? T.L. Joyner and City of Roswell.

If you found either of the defendants liable, what amount do you award as compensatory damages? From T.L. Joyner the amount of $5,000. From the City of Roswell the amount of $250,000.

If you awarded compensatory damages against Defendant Ramey and/or Joyner, do you find punitive damages against Defendant Ramey or Joyner? No. If so, in what amount and against whom? No. This 14th day of March, 1984. Carroll H. Dallas, Foreperson.

In the Supreme Court of Georgia

Decided: September 29, 1982

38495. DAVIS v. CITY OF ROSWELL

SMITH, Justice.

James Davis appeals from an order of the Fulton County Superior Court granting the City of Roswell's motion for judgment on the pleadings. He contends that it was error to dismiss the City of Roswell from the action and error to grant a judgment on the pleadings. We affirm in part and reverse in part.

Davis alleges in his complaint that while enroute to the hospital with his critically ill wife he was stopped by M.D. Ramey, a Roswell city policeman. According to Davis, Ramey detained him for approximately an hour without formally arresting or charging him. Ramey was informed of the emergency involving Davis' wife, but refused to allow Davis to proceed, to escort him, or to call immediately an ambulance for trans-

port of his wife.

Ramey first summoned the Fire Department's Rescue Squad, who proved incapable of handling the problem and called an ambulance. The Davis' waited for the ambulance and only then was Mrs. Davis allowed to be carried to a nearby hospital. She died there about twelve hours later. Davis named the City of Roswell, the Roswell Chief of police, and Ramey as defendants in his complaint. The court below granted Roswell's motion for judgment on the pleadings based on Ga. Code Ann. §69-307: "A municipal corporation shall not be liable for the torts of policemen or other officers engaged in the discharge of the duties imposed on them by law." Accordingly, the court dismissed Roswell from the action.

(1) The allegations of one denied medical attention and incarcerated after an automobile accident have been held to state a cause of action under 42 U.S.C. §1983. Hughes v. Noble, 295 F.2d 495 (5th Cir.

1961). The federal courts have demonstrated concern that where needed medical care is refused the denial or improvident delay of such aid may constitute deprivation of constitutional due process. Fitzke v. Shappell, 468 F.2d 1072 (6th Cir. 1972).

Appellee City of Roswell argues that under Georgia law a municipality is immune from liability for failure to perform or errors in performing a governmental function. Of course it is a federal right of action asserted here, and it is controlled by federal law. The supremacy clause of the Constitution prevents us from construing the federal rule to permit a state immunity defense.

In order to state a claim under 42 U.S.C. §1983 the plaintiff must allege that the defendant is a person who deprived him of a constitutional right while acting under color of state law or custom. See Smith v. YMCA of Montgomery, 462 F.2d 634 (5th Cir. 1972). Municipalities are among the "persons"

to whom §1983 may apply, Monell v. New York City Department of Social Services, 436 U.S. 658 (98 SC 2018, 56 L.E.2d 611) (1978). "By including municipalities for violations of the Federal Constitution and laws, Congress -- the supreme sovereign on matters of federal law -- abolished whatever vestige of the state's sovereign immunity the municipality possessed." Owen v. City of Independence, 445 U.S. 622, 647 (100 SC 1398, 63 L.E.2d 673) (1979).

The City of Roswell proposes that Davis seeks to impose liability upon it based upon either Roswell's negligent operation of its police department or a respondeat superior theory and argues that neither ground will support appellant's claim. We agree that neither Monell nor Owen permit a municipality to be held liable under 42 U.S.C. §1983 solely on negligence or respondeat superior theories. Nevertheless, if appellant is able to prove that officer Ramey

deprived him of federally guaranteed rights while acting in the "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts may fairly be said to represent official policy," Monell v. New York City Department of Social Services, 436 U.S. 658, 694 (98 SC 2018, 56 L.E.2d 611) (1978) he will succeed in his action and liability may be imposed on the City of Roswell.

We find that in the present case Davis has pleaded facts sufficient to state a cause of action cognizable under 42 U.S.C. §1983. As a result of his detention by officer Ramey, acting in his job as a Roswell policeman, Davis was unable to reach the hospital at a critical time in his wife's illness. It appears that Davis may be entitled to relief under some state of facts involving the City of Roswell which could be proved in support of his claim under 42 U.S.C. §1983, Frady v. Ervin, 245 Ga. 307(5)

(264 S.E.2d 866) (1980); 2A Moore's Fed. Prac. 2343 §12.15. Therefore, the judgement on the pleadings is reversed.

(2) As to the appellant's enumerations questioning the constitutionality of Ga. Code Ann. §69-307 and the immunity of the City of Roswell from liability under Ga Code Ann. §69-307, we find no error and, accordingly, affirm.

Judgment affirmed in part and reversed in part. All the Justices concur, except Jordan, C.J., Marshall, J. and Weltner, J., who dissent.

IN THE SUPERIOR COURT FOR THE COUNTY

OF FULTON

STATE OF GEORGIA

JAMES R. DAVIS, individually and as best friend of GETNA W. DAVIS,	)	
Plaintiff	)	CIVIL ACTION FILE No. C-74749
v.	)	
MICHAEL DOUGLAS RAMEY, T.L. JOINER, and The CITY OF ROSWELL, A Municipal Corporation,	)	
Defendant	)	

PLAINTIFF'S THIRD AMENDMENT
TO COMPLAINT

Comes now JAMES R. DAVIS, Plaintiff in the above styled case and as a matter of right files this his Third Amendment to the Complaint and prior to any pretrail order being entered and amends his Complaint as follows:

1.

By striking paragraph forty-seven (47) in Count Four of Plaintiff's Com-

plaint in its entirety and substituting in lieu thereof the following:

Plaintiff realleges and incorporates into County Four the numbered paragraphs of Count One, that being paragraphs one (1) through thirty (30) and the numbered paragraphs of Count Two that being paragraphs thirty-one (31) through thirty-nine (39).

2.

By striking Plaintiff's prayers in his Original Complaint in their entirety and substituting in lieu thereof the following:

WHEREFORE, Plaintiff prays:

(a) That he have joint and severable judgment against the Defendants;

(b) That he recover reasonable value of the life of Getna W. Davis in the amount of five hundred thousand ($500,000.00) dollars;

(c) That he recover general damages in the amount of fifty thousand ($50,000.00) dollars;

(d) That he recover special and consequential damages in the amount of five hundred thousand ($500,000.00) dollars;

(e) That he recover punitive damages, or in the alternative, vindictive damages in the amount of one million ($1,000,000.00) dollars;

(f) That he recover reasonable attorney's fees and the costs of this litigation;

(g) That he have such other and further relief as this Court deems meet and proper.

Respectfully submitted this the 16th day of November, 1982.

JONES-HARDWICK-CARNE, P.A.

_____

Clifford H. Hardwick
Attorney for Plaintiff

Suite 801
3301 Buckeye Road, NE
Atlanta, Georgia 30341
(404) 455-4500

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party with a copy of the foregoing by placing in a properly addressed envelope with adequate postage thereon, in the United States Mail addressed to: Mr. Dennis J. Webb, Attorney at Law, Dennis, Cory, Webb, Carlock & Williams, Post Office Box 56770, Atlanta, Georgia 30303.

This the 17th day of November, 1982.

JONES-HARDWICK-CARNE, P.A.

_____
Clifford H. Hardwick
Attorney for Plaintiff

Suite 801
3301 Buckeye Road, NE
Atlanta, Georgia 30341
(404) 455-4500

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

JAMES R. DAVIS, individually and as next best friend of GRETNA W. DAVIS,	)	
vs.	)	CIVIL ACTION FILE NUMBER C-74749
ROBERT RAMEY, T.L. JOINER, and THE CITY OF ROSWELL, a municipal corporation,	)	
Defendants	)	

PLAINTIFF'S SUPPLEMENTAL COMPLAINT

Comes now JAMES R. DAVIS, Plaintiff in the above-styled case, and supplements his original complaint by the addition of the following Counts:

COUNT IV

47.

Plaintiff realleges and incorporates into County IV the numbered paragraphs of Count I, that being paragraphs 1 thru 30.

48.

That the aforesaid Defendants acting in their official capacities under

color of law did knowingly, wilfully and maliciously violate the Constitutional Rights of the Plaintiff by depriving the Plaintiffs of their rights to life, liberty and the pursuit of happiness.

49.

That the Defendants did knowingly and wilfully deny the Plaintiffs that equal protection of law guaranteed under the Constitution of the United States, hereby further depriving him of his Civil Rights as set forth under 42 U.S.C.A. 1983.

50.

That the Defendants herein were acting in their official capacities as officers and agents under the color of law for THE CITY OF ROSWELL, a municipal corporation, therefore, THE CITY OF ROSWELL is directly responsible as Respondeat Superior for the acts of its agents.

Respectuflly submitted this the 2nd day of July, 1981.

CLIFFORD H. HARDWICK
Attorney for Plaintiff

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

JAMES R. DAVIS, individually and as next best friend of GRETNA W. DAVIS, Plaintiff vs. ROBERT RAMEY, T.L. JOINER, and THE CITY OF ROSWELL, A MUNICIPAL CORPORATION, Defendants	)	CIVIL ACTION NO. C-74749

COMPLAINT

Comes now JAMES R. DAVIS, Plaintiff in the above-styled case, and respectuflly shows the Court that:

COUNT I.

1.

ROBERT RAMEY is subject to the jurisdiction of this Honorable Court and service may be perfected upon the Defendant at the Roswell Police Department, Alpharetta Street, Roswell, Georgia.

2.

T.L. JOINER is the Chief of Police for THE CITY OF ROSWELL, a municipal corporation, and is subject to the jurisdiction of this Court and service may be perfected upon this Defendant at the Roswell Police Department, Alpharetta Street, Roswell, Georgia.

3.

THE CITY OF ROSWELL is a municipal corporation, organized and duly chartered under the laws of State of Georgia and is subject to the jurisdiction of this Court. Service may be perfected upon the corporation at the office of its Mayor, W.L. MABRY, at the office of the Mayor, Roswell City Hall, Alpharetta Street, Roswell, Georgia.

4.

Notice of Plaintiff's claim was duly served upon THE CITY OF ROSWELL on or about the 17th day of November, 1980, pursuant to Georgia Code Ann. 69-308, and Defendants

have refused to respond as required by law.

5.

That at all times referred to herein ROBERT RAMEY was a police officer for THE CITY OF ROSWELL under the direct control and supervision of Defendant, T.L. JOINER, and acting within the scope of his employment as an employee of THE CITY OF ROSWELL.

6.

That at all times referred to herein T.L. JOINER was the Chief of Police for THE CITY OF ROSWELL and was directly responsible for the control, supervision and training of Officer ROBERT RAMEY and all other officers of the Roswell Police Department.

7.

That at all times referred to herein GRETNA DAVIS was the lawful wife of JAMES R. DAVIS.

8.

That on or about the 24th day of May, 1980, GRETNA DAVIS became ill and required

immediate medical attention.

9.

That on or about the 24th day of May, 1980, Plaintiff, JAMES R. DAVIS, along with MRS. JEAN EPPS attempted to transport GRETNA DAVIS to St. Joseph's Hospital for emergency treatment.

10.

That Defendant, ROBERT RAMEY, while acting in his capacity of police officer for THE CITY OF ROSWELL, stopped the Plaintiff, JAMES R. DAVIS, at the intersection of Holcomb Bridge Road and Georgia 400, within the city limits of Roswell, County of Fulton, State of Georgia.

11.

That Plaintiff immediately notified the Defendant, OFFICER RAMEY, of the emergency situation and requested assistance in transporting his wife to St. Joseph's emergency room.

12.

That Defendant RAMEY refused assistance and placed the Plaintiff under arrest, refusing to allow him to proceed with his emergency mission.

13.

That Plaintiff was not charged with violation of any law or ordinance.

14.

That the arrest and detention of Plaintiff by the Defendant was unlawful and in violation of Plaintiff's constitutional rights.

15.

That OFFICER RAMEY inspected the automobile of the Plaintiff and the person of GRETNA DAVIS and verified that there was indeed an emergency.

16.

That after the emergency situation was verified by OFFICER RAMEY he still refused to allow the Plaintiff to continue on his journey and held him under arrest

along the side of Georgia 400 and Holcomb Bridge Road, while calling for police back-up units.

17.

That the alleged purpose of the arrest was for a minor traffic violation for which the Plaintiff was in fact not charged nor was he guilty.

18.

That the actions of OFFICER RAMEY constituted an unlawful arrest and clear abuse of police power.

19.

That Defendant RAMEY detained the Plaintiff and his wife,GRETNA DAVIS, along the side of the road for approximately twenty (20) minutes before summoning any medical assistance.

20.

That the first medical assistance summoned by OFFICER RAMEY constituted only the volunteer Fire Department for THE CITY OF ROSWELL, and their emergency squad which

are neither trained or capable of handling the emergency situation as presented.

21.

That upon arriving at the scene, the emergency rescue squad for the Fire Department immediately summoned the Metro Ambulance Service.

22.

That Plaintiff and his wife were further detained along the side of Georgia 400 and Holcomb Bridge Road for an additional thirty (30) minutes approximately and forced to wait for the Metro Ambulance to arrive.

23.

That immediately upon arrival of Metro Ambulance, Plaintiff's wife, GRETNA DAVIS, was placed in the ambulance and only then was she allowed to be transported to St. Joseph's Hospital.

24.

That upon arrival at St. Joseph's Hospital it was determined that MRS. DAVIS

had passed three (3) blood clots through her heart and was indeed in critical condition.

25.

That the Plaintiff's wife, MRS. GRETNA DAVIS, died at 12:16 on the morning of May 25, 1980.

26.

That the unlawful detention of the Plaintiff along the side of the highway for approximately an hour constitutes clear abuse of police powers and is an unlawful arrest.

27.

That the refusal to allow the Plaintiff to continue on an emergency mission after the emergency had in fact been verified by Defendant RAMEY constitutes gross negligence on the part of OFFICER RAMEY and upon the part of the Roswell Police Department.

28.

As a direct and approximate result of the actions of Defendant RAMEY and the

Roswell Police Department, the Plaintiff, GRETNA DAVIS', life was placed in serious jeopardy and in fact did lose her life.

29.

That as a direct and approximate result of the actions of Defendant RAMEY and the Roswell Police Department, the Plaintiff, JAMES R. DAVIS, was forced to incur both financial and emotional loss.

30.

That the actions of Defendant RAMEY and the Roswell Police Department did cause and inflict serious emotional stress and mental anguish upon the Plaintiff, JAMES R. DAVIS.

COUNT II

31.

Plaintiff realleges and incorporates into Count II of his complaint all of the numbered paragraphs of Count I being Paragraphs 1 through 30.

32.

That THE CITY OF ROSWELL and the Defendant, T.L. JOINER, had a legal duty to establish standards for the performance of their police officers so as to insure the life and safety of the general public.

33.

That the Defendants, T.L. JOINER and THE CITY OF ROSWELL, had a legal duty to supervise and control the actions of their police officers and to remove from the force such officers whose actions were in violation of law, excessive negligence or wantonly malicious.

34.

That the Defendants, T.L. JOINER and THE CITY OF ROSWELL, had a legal duty to establish standard operating procedures for the handling of emergency situations and to train the officers of the Roswell Police Department in the handling of said emergency situations.

35.

That the Defendants, T.L. JOINER and THE CITY OF ROSWELL, prior to the incident on May 24, 1980, that is subject matter of the present litigation, had notice that the Defendant RAMEY had consistently exercised poor judgment, abused his police powers and/or performed his duties in a negligent manner.

36.

That Defendants, T.L. JOINER and THE CITY OF ROSWELL, knowingly, willing and maliciously ignored its previous notices as to the conduct of OFFICER RAMEY, continued to place him in a position so as to endanger the health and life of the general public and in particular the Plaintiffs herein.

37.

That the Defendants, T.L. JOINER and THE CITY OF ROSWELL, violated their duties in failing to provide adequate training for the officers of the City Police Department.

38.

That the Defendants, T.L. JOINER and THE CITY OF ROSWELL, violated their duties in failing to establish standard operating procedures for the handling of an emergency situation as is contemplated by the situation that is the subject matter of the present litigation.

39.

That as a direct and approximate result of the breach of their legal duty by the Defendants, Plaintiff has incurred damages in the loss of his wife, financial loss and in the extreme amount of mental and emotional suffering.

COUNT III

40.

Plaintiff realleges and incorporates into Count III of his complaint all of the numbered paragraphs of Count I being paragraphs 1 through 30.

41.

That the Defendants, RAMEY, JOINER and THE CITY OF ROSWELL, had a legal duty to protect the life, welfare and property of the general public.

42.

That the Defendants, RAMEY, JOINER and THE CITY OF ROSWELL, had a legal duty to refrain from any actions that would harm or endanger the life of the general public.

43.

That the Defendants, RAMEY, JOINER and THE CITY OF ROSWELL, violated their legal duties in unlawfully delaying the Plaintiff on an emergency mission, thereby endangering the life of GRETNA DAVIS.

44.

That the Defendants, RAMEY and the Roswell Police Department, under the direct control and supervision of the Defendants, T.L. JOINER and THE CITY OF

ROSWELL, performed their functions on the 24th day of May, 1980, in a negligent manner with a wanton and malicious disregard for the health and welfare of the Plaintiff, JAMES R. DAVIS, and of his wife, GRETNA DAVIS.

45.

As a direct and approximate result of the negligence of the Defendants, Plaintiff has suffered financial loss, loss of his wife and great amounts of pain and mental anguish.

46.

That as a direct and approximate result of the illegal and unauthorized acts of the Defendants on the 24th day of May, 1980, deprived the Plaintiff, GRETNA DAVIS, of critically needed emergency treatment, thereby endangering her life and contributing to, if not, the direct cause of her death.

WHEREFORE, Plaintiff prays:

(a) He have judgment jointly and severably against the Defendants;

(b) That he recover the value of the life of GRETNA DAVIS in the amount of $500,000.00;

(c) That he recover special and consequential damages in the amount of $500,000.00;

(d) That he recover punitive damages in the amount of $1,000,000.00;

(e) That he recover reasonable attorney's fees and the cost of this litigation;

(f) That he have such other and further relief as this Court deems meet and proper.

Respectfully submitted this the ___ of _____, 19___.

_____
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Supreme Court, U.S.
FILED
MAR 24 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1432

In The
Supreme Court of the United States
October Term, 1985

JAMES R. DAVIS,

Petitioner,

v.

CITY OF ROSWELL, GEORGIA
and T. L. JOYNER,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DENNIS J. WEBB
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Counsel for Respondents
City of Roswell, Georgia
and T. L. Joyner

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTION PRESENTED

WHETHER THE SUPREME COURT OF GEORGIA PROPERLY FOLLOWED, *MONELL vs. NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES*, 436 U. S. 658 (1978) AND *CITY OF OKLAHOMA vs. TUTTLE*, — U.S. —, 105 S. Ct. 2427 (1985) WHEN IT HELD, ON NUMEROUS GROUNDS, THAT THE PETITIONER DID NOT PRESENT ANY EVIDENCE AT TRIAL TO ESTABLISH A CAUSE OF ACTION UNDER 42 U.S.C. § 1983.

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STATUTES:

42 U.S.C. § 1983 ..... 4, 6, 7

Respondents City of Roswell, Georgia and T. L. Joyner respectfully oppose the Petition for a Writ of Certiorari to the Supreme Court of Georgia on the grounds that the Supreme Court of Georgia properly construed and applied decisions of this Court which are dispositive of the issues raised by the Petitioner.

STATEMENT OF THE CASE

On May 24, 1980, Michael Douglas Ramey, a City of Roswell police officer, stopped the respondent and his wife while they were on the way to the hospital. Officer Ramey stopped the respondent because of his "erratic driving". (A-9, 10). Officer Ramey testified that at one point the respondent's vehicle crossed the centerline and he was forced to leave the roadway in order to avoid a collision. (A-12, 13). The petitioner denied that he was driving erratically, but admitted that his vehicle "swayed" at the point that it met Officer Ramey's vehicle on the roadway. (A-1, 2).

After the stop, Officer Ramey refused to allow the petitioner to proceed on to the hospital since the petitioner was not "capable of making it to the hospital" (A-11, 12) and the respondent's wife was in immediate need of "emergency medical services or people trained in that area." (A-14). The petitioner admitted that his wife was very sick (A-2, 3) and that he was "emotional and very upset" when he was stopped by Officer Ramey. (A-3).

It is undisputed that the emergency medical technicians called by Officer Ramey were at the scene within

minutes of the stop. (A-22, 23). They found the petitioner's wife to be "blue in color, caused by lack of oxygen" and could not obtain a blood pressure. (A-4, 5). They immediately began rendering medical assistance to her.

It is unknown exactly how much time elapsed before the petitioner's wife was taken to the hospital, but the ambulance which transported her arrived at the hospital (which was approximately 8.2 miles away) approximately 29 minutes after the petitioner's vehicle was first stopped by Officer Ramey. (A-22, 24).

The crucial issue before this Court on the Petition for Certiorari is whether the respondents had a custom or policy which caused Officer Ramey's actions. *Monell v. New York City Department of Social Services,* 436 U.S. 658 (1978). The following evidence bears directly on that issue.

Officer Ramey testified that he was unaware of any custom or policy which directed his handling of the above-stated incident.[1] Further, none of the witnesses who testified at trial stated that the City of Roswell had any such policy or custom.[2] Respondent Joyner affirmatively testi-

---

1 Officer Ramey testified: Q. To your knowledge, in May of 19 and 80 did Roswell have any policy of how to handle such a situation? A. To my knowledge, they did not. (A-8). Q. The question, Mr. Ramey, was: Did somebody with the Roswell Police Department, one of your supervisors, tell you that that is the accepted thing that you were supposed to do, is call the Roswell Volunteer Emergency Rescue Squad? A. No, sir. (A-14).

2 The petitioner contends that the testimony of John Watson established such a policy or custom. That contention is not,

(Continued on following page)

fied that no such policy or custom existed and that it was within the officer's "discretion as to how to handle that type of situation." (A-20).

Moreover, the petitioner did not produce any evidence at trial to show that other, similar incidents had ever taken place in the City of Roswell. In fact, the only testimony on that subject was by respondent Joyner, who testified that he had never had a similar incident brought to his attention. (A-20).

On the date of the incident, Officer Ramey had been employed by the City of Roswell Police Department for approximately two months. His training with that police department consisted of three weeks of on-the-job training, however, the record shows that he had previously been trained and employed by the Forsyth County Sheriff's Department as a Deputy Sheriff (A-7, 8) and that he had received first aid training at a technical school and in the Army. (A-6, 7). Further, the unrefuted testi-

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(Continued from previous page)

however supported by the record. A review of Watson's testimony shows that he absolutely denied that any such policy or custom existed: Q. Captain Watson, in view of your testimony, I am foggy as to what the custom is. I understand it's the custom in the City of Roswell, when you find someone sick or injured you call for an ambulance; is that correct? A. Yes, sir; if their injury warrants being transferred to a medical facility. Q. Under the particular facts that Officer Ramey found on the morning of the 24th, his dealing with that situation, there is no set policy in the City of Roswell in that regard, is there? A. No, sir. Q. That was left to his discretion, wasn't it? A. Yes, sir. (A-18). Furthermore, even if Watson had testified that it was *his* understanding that such a policy or custom existed, that would not have been sufficient to establish that *the respondents* had enacted, authorized or had knowledge of any such policy or custom. *See, e.g., Dominguez v. Beame,* 603 F.2d 337 (2nd Cir. 1979) and *Brewer v. Blackwell,* 692 F.2d 387 (5th Cir. 1982).

mony of respondent Joyner was that it was the policy of the City of Roswell Police Department to comply with all of the State of Georgia's requirements regarding police officer qualifications and training. (A-18, 19).

SUMMARY OF ARGUMENT

The Supreme Court of Georgia, in a lengthy and well-reasoned opinion, held that the petitioner failed to present any evidence at trial to establish a cause of action under 42 U.S.C. § 1983. Accordingly, the Petition for Writ of Certiorari must be denied.

ARGUMENT

A recent decision by this Court, *City of Oklahoma v. Tuttle,* — U.S. —, 105 S.Ct. 2427 (1985) (hereinafter "*Tuttle*"), is dispositive of all issues raised by the petitioner. In that case, this Court granted certiorari to consider the question: "Whether a single isolated incident of the use of excessive force by a police officer establishes an official policy or practice of a municipality sufficient to render the municipality liable for damages under 42 U.S.C. § 1983." *Tuttle,* 105 S.Ct. at 2431 n. 2.

After recognizing the split in the United States Courts of Appeals and reviewing its previous decisions regarding municipal liability under § 1983, notably *Monell v. New York City Department of Social Services,* 436 U.S. 658 (1978) (hereinafter "*Monell*"), this Court reaffirmed its holding that a municipality may not be held liable under

a *respondeat superior* theory (or solely because it employs a tortfeasor), stating: "*Monell* teaches that the city may only be held accountable if the deprivation was the result of a municipal 'custom or policy.' " *Tuttle,* 105 S. Ct. at 2433. This Court then considered whether proof of a single, isolated incident, without more, is sufficient to establish a municipal "custom or policy" and held that it was *not:*

> Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell,* unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker. Otherwise the existence of the unconstitutional policy, and its origin, must be separately proved. But where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the "policy" and the constitutional deprivation. *Id.* 105 S. Ct. at 2436.

In the case *sub judice,* the evidence established a single, isolated incident involving one of the respondents' police officers. It entirely failed, however, to establish any other incident or that the respondents had adopted or ratified, in any manner, a "custom or policy" which authorized or approved the officer's actions. Thus, the petitioner's argument that the incident proved at trial, without more, is sufficient to establish a "custom or policy" must fail: It is insufficient as a matter of law to prove that any of the alleged "inadequacies resulted from conscious choice—that is, . . . that the policymakers de-

liberately chose a training program which would prove inadequate." *Tuttle,* 105 S. Ct. at 2436.[3]

Moreover, even if a "custom or policy" of improper training had been proved by the petitioner, there was no evidence presented at trial that such a policy "caused" the complained of incident. Other than the petitioner, none of the witnesses who testified at trial stated that Officer Ramey should have acted any differently than he did. The other police officers who testified at trial, both of whom had been through the police officer training course mandated by the State, testified that Ramey behaved properly under the circumstances. (A-16, 17, 20, 21). There were no witnesses presented by petitioner to counter that testimony or to establish that further or other training could have improved the manner in which Officer Ramey handled what obviously was a very difficult situation. This failure to establish "an affirmative link between the policy and the particular constitutional violation alleged" further bars the petitioner's § 1983 claim. *Tuttle,* 105 S. Ct. at 2436.

The petitioner alleges, *inter alia,* that the respondents had a "policy" that the respondents' police officers were to call for an ambulance when they encountered an ill or injured person and a "policy" that police vehicles were not to be used to transport ill or injured persons; however, there was no evidence presented to show that these "policies" could be "attributed to a municipal policymaker."

---

[3] In fact, as stated previously, the undisputed evidence was that the respondents had a policy of complying with all of the State of Georgia qualification and training requirements for police officers.

Tuttle, 105 S. Ct. at 2436. Furthermore, there was no evidence of an "affirmative link" between these policies and the alleged constitutional deprivation. *Id.* Instead, these "policies" amount to nothing more than harmless rules and regulations regulating the respondents' police force which, under *Tuttle,* are insufficient to support a § 1983 claim:

> [S]ome limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional, or the test set out in *Monell* will become a dead letter. Obviously, if one retreats far enough from a constitutional violation some municipal "policy" can be identified behind almost any such harm inflicted by a municipal official; for example, (the police officer) would never have killed respondent's husband) if Oklahoma City did not have a "policy" of establishing a police force. But *Monell* must be taken to require proof of a city policy different in kind from this latter example before a claim can be sent to a jury on a theory that a particular violation was "caused" by the municipal "policy." At the very least there must be an affirmative link between the policy and the particular constitutional violation alleged.

Finally, the petitioner argues that the Supreme Court of Georgia ignored his "primary theories of recovery [which were Officer Ramey's] . . . stop and detention of petitioner without probable cause . . . and interference with petitioner's efforts to secure immediate medical treatment . . . for his elderly wife . . ." (Petitioner's Brief, pages 9-10). That argument reflects the petitioner's very basic misunderstanding of what constitutes a cause of action under 42 U.S.C. § 1983. As interpreted and applied in *Monell* and *Tuttle,* 42 U.S.C. § 1983 only provides re-

lief when "the action that is alleged to be unconstitutional implements or executes a policy, statement, ordinance, regulation, or decision *officially adopted and promulgated by the body's officers . . .*" *Monell, supra* at 690-691 (emphasis added). Clearly, the petitioner's "primary theories" do not meet that standard.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

DENNIS J. WEBB
(Counsel of Record)
BRIAN A. BOYLE

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Counsel for Respondents
City of Roswell, Georgia
and T. L. Joyner

APPENDIX

(p. 11) Q. Was the car in good operating condition?

A. Yes sir, as good as the average car.

Q. Was there anything unusual about the car that had been custom designed, or anything like that, to make it look like it might be a speed car or something?

A. No, sir.

Q. I interrupted your testimony. I believe you and Jean had put her in the car. Front or back seat?

A. In the back seat.

Q. And where did Miss Abt get?

A. She got in the back seat with her.

Q. Did you drive?

A. Yes, sir.

Q. If you would, describe the trip.

A. Well, I came out from my house and it's about seven-tenths of a mile up to where you make a turn on another road. I was on Nesbitt Ferry, turned on Scott and went down to Holcomb Bridge. And I went down Holcomb Bridge about a mile and I met Officer Ramey, and right where I met him the road was rough and the wagon swayed. Right above where I met him a Volkswagen bus pulled out in front of me and I followed him to the top of the hill and he turned in at a Seven Eleven store, and I pulled across—the street was open, the street was wide and no traffic coming and I pulled across the road and went round him and went on. And I got out at the intersection, just (p. 12) fixing to cross the road, and Mrs. Abt told me,

said: Mr. Davis, they are going to turn on the light on you. And he did, and I turned left onto the ramp and I stopped and got out and went back and asked the officer to lead me on in to St. Joseph's Hospital.

MR. WEBB: Excuse me, Your Honor. I object to the witness just talking. I ask that he be asked questions and he give answers. That's the rule and I would ask that the procedure be followed.

THE COURT: I forgot what the question was, Mr. Webb. There seemed to be a leak in there. Mr. Witness, just answer the question. Don't go into a dissertation that don't involve answers to this question. I'm not saying you did this in this case, but that's not the proper way to do it.

MR. HARDWICK: I had asked him to describe his trip and I believe that is what he was doing.

(Plaintiff's Exhibit 2 was marked for identification by the court reporter.)

BY MR. HARDWICK:

Q. Roy, I hand you what has been marked plaintiff's Exhibit 2 and ask you if you can identify this?

A. Yes, sir. That is the Holcomb Bridge Road.

Q. Is that the strip of Holcomb Bridge Road you just testified about?

A. Yes, sir.

* * *

(p. 40) I didn't know how critical she was but I knew she was in critical condition.

Q. You told Officer Ramey there at the scene that your wife was in dying condition, didn't you?

A. I may have. I don't remember. But anyway, she was unconscious and I didn't know what was going to—I was just in a hurry to get her to the hospital if I could.

Q. You were very concerned about her health and safety and well being at that point, weren't you?

A. That's right.

Q. She was in terrible shape, wasn't she?

A. That's right.

Q. And you obviously were emotional and very upset, weren't you?

A. Well I was when I got stopped; yes, sir.

Q. After they got her to the hospital, you saw her the first time about 10:00?

A. Yes, sir. They carried her on in emergency and I couldn't go in there.

Q. Was she conscious, virtually, from 10:00 up until the time she died?

A. Yes, sir.

Q. So you were able to be with her from 10:00 in the morning until midnight?

A. Yes, sir.

* * *

(p. 88) Different vehicle and met you?

THE WITNESS: Correct.

BY MR. WEBB:

Q. Did you ever note how long it was after you got there that they got there, especially Spencer?

A. Right after I got the box out, he walked up.

Q. What is the box?

A. The orange blood pressure box we have blood pressure cups and things like that in.

Q. And was Mrs. Davis still in the car at the time you get there?

A. Correct.

Q. And how would you describe the condition she was in how was she lying, so forth?

A. She was in the back of the car laying face down, very lifeless. She was a little cyanotic, if I remember correctly.

Q. What does that mean?

A. Cyanotic. Kind of blue in color, caused by lack of oxygen.

Q. Was there anything about the way she was lying face down that might have contributed to that or lack of oxygen?

A. No, sir. I don't believe so.

Q. Did you fell that was a reasonable way or a good way to have her lying, face down in the seat?

A. No, sir.

* * *

(p. 109) Q. Was it necessary to use it when the truck was already there?

A. No, sir I didn't have to use my stuff because the same stuff was on the rescue truck.

Q. Okay. When you got there Mr. Gresham was getting out of the truck?

A. He had already gotten out of the truck and was getting the first-aid bag out of the back.

Q. And you went immediately to Mrs. Davis?

A. Yes, sir.

Q. Now you have answered questions about embolism and all that—blood clots. Was there any evidence of bleeding on Mrs. Davis?

A. I don't recall.

Q. Do you know what blood clots and embolisms are and do?

A. Yes, sir.

Q. Does that require any bleeding on the outside.

A. No, sir.

Q. Now, when you got her inside the truck, you took her vital signs; is that right?

A. Yes, sir.

Q. Do you happen to remember what you found about them?

A. I recall that we could not obtain a blood pressure, the pulse was very weak, and then respirations were real labored.

Q. And when you don't have any blood pressure, is that as

* * *

(p. 142) from the time of his employment up to the time of the Davis incident.

THE WITNESS: Yes, sir.

BY MR. HARDWICK:

Q. Did they give you any material to study at home, any books, pamphlets, study courses?

A. No, sir.

Q. On the date of the Davis incident, were you a certified law enforcement officer under the laws of the State of Georgia?

A. No, sir; I was not.

Q. Prior to the Davis incident, had you received any type of medical training?

A. Yes, sir. I received sixty hours of basic first aid.

Q. From where, sir?

A. From a course I had taken at Lanier Tech.

Q. What type of training was this?

A. Covered your basic bleeding, it went into how to treat fractures, profuse bleeding, shock, C.P.R.

Q. When did you take this training?

A. I took this training, it was in the spring of 1975.

Q. So, it had been approximately five years prior to the Davis incident; that is correct?

A. Yes, sir.

Q. Did you ever update that first-aid treatment course?

(p. 143) A. It was updated when I was in the militar,.

Q. And when would that be, sir?

A. That would have been in January, 1980. I'm sorry, January of 1979.

Q. Which military branch was that, sir?

A. U.S. Army.

Q. And how long did you stay in the Army?

A. I stayed 84 days.

Q. Was that some sort of reservists six months duty or something?

A. No, sir, it was not.

Q. And why did you stay only 84 days?

A. I was injured during basic training and I was released under a medical discharge.

Q. What was the nature of the injury?

A. We were on maneuvers. I fell and reinjured an old back injury.

Q. Prior to the Roswell Police Department, did you work or had you worked for any police department?

A. Yes, sir. In the fall of 1978 I worked for approximately four months for the Forsyth County Sheriff's Department.

Q. And what was your position there?

A. Deputy sheriff.

Q. Did you receive any special training there?

(p. 144) A. No, sir, I did not; except for the fact of riding with a senior officer, as such, for four weeks.

Q. So, up until the time of the Davis incident, if I understand your testimony, you have never received any formal training or training in police work, law enforcement work or anything of this nature?

A. That's correct.

Q. Did you receive any training from the Roswell Police Department as to what procedures to follow as a police officer, in coming upon an emergency of the type you came upon with Mr. Davis?

A. No, sir.

Q. To your knowledge, in May of 19 and 80 did Roswell have any policy of how to handle such a situation?

A. To my knowledge, they did not.

Q. Did the Roswell Police Department give you any training whatsoever in handling medical problems that you may discover on your patrol or beat?

A. No, sir.

Q. What did they tell you to do if you ran across a problem like that?

A. I was never instructed or I was never told that I would come across a problem like that.

Q. Didn't they tell you anything about how to handle an emergency?

* * *

(p. 149) to me checking Mrs. Davis.

Q. How long, prior to your checking his statement?

A. A matter of seconds.

Q. So, after you checked his statement did you have any reason to believe he was lying to you?

A. As soon as I looked in the back of the car, no, sir; I did not.

Q. Y'all were stopped at the entrance ramp of Georgia Four Hundred; is that correct?

A. On the south-bound ramp; yes, sir.

Q. St. Joseph's Hospital is approximately 8.42 miles south of that; correct?

A. Yes, sir.

Q. And it's all divided expressway until you get right to the end?

A. That's correct.

Q. Early in the morning hours?

A. Yes, sir.

Q. No traffic, by previous testimony?

A. No traffic.

Q. If Mr. Davis had told you he had to get to the hospital and you had verified the condition of his wife, why didn't you let him go to the hospital?

A. Having observed Mr. Davis' erratic driving, I did not feel, having sworn to protect and serve the public, that he was (p. 150) in any condition to continue the trip further.

Q. Then why didn't you offer to make a courtesy run, which is what law enforcement people normally call, to run somebody to the hospital. Why didn't you drive it?

A. Why did I not? I simply don't drive other people's vehicles, sir.

Q. Why didn't you put her in the back of your car? It's a two-seated car, isn't it?

A. That's correct.

Q. Full-sized patrol car?

A. That's correct.

Q. You didn't have anybody in the back seat, did you?

A. No, sir, I did not.

Q. If you felt Mr. Davis couldn't drive and you wouldn't drive his car, why didn't *you put her in your car to* take her?

A. Simply because I did not want to move the patient. Since I had found her in that condition, I did not know exactly her problem or why she appeared to be in the condition she was in. Second of all, my car does not carry life sustaining equipment, such as oxygen, blankets. There was no way to get her in there comfortable.

Q. Well, did Mr. Davis' car contain life supporting sytems?

A. No, sir, it did not.

Q. So it wouldn't have made any difference which car she

* * *

(p. 161) Q. How did you keep close check on Mrs, Davis?

A. By observing her condition. I couldn't tell if it worsened. There was nothing, really, I could do.

Q. Well, did you ever talk to Mr. Davis to ask him what the problem was?

A. No, sir. Mr. Davis was too upset.

Q. You say Mr. Davis was upset. Would you tell us what you mean. What was his mannerisms that made you believe he was upset?

A. He was very loud, boisterous. He kept repeating that someone would pay for his being detained on the side of the road. So, I tried to talk with him about the situation but there was no response.

Q. Mr. Davis was loud and boisterous?

A. Yes.

Q. Was he trying to go? Was he asking you to let him get to the hospital?

A. He never asked, sir. He stated simply: I have got to go to the hospital.

Q. Did you ever tell him he couldn't go?

A. No, sir. I stated that help was on its way.

Q. Did you tell Mr. Davis that you couldn't let him go when you pulled him over and he asked you to let him go to the hospital?

A. I told Mr. Davis that under his—from what I had (p. 162) observed of his driving, that he was in no way, in my judgment, capable of making it to the hospital. He not only had his life in the car but also his wife and that of the third passenger.

Q. Mr. Ramey, did you ever use the words: I can't let you go, or you cannot go?

A. No, sir; I did not use those words.

Q. Did you ever prevent Mr. Davis from getting back in his car?

A. No, sir; I did not.

Q. He made no effort, he didn't ask you at all, could he go?

A. There was no question ever asked could he go. The statement was simply made: I have got to go to the hospital.

Q. And you never once told him he could go?

A. I didn't tell him he could go and I didn't tell him he couldn't go.

Q. If he had got back in the car, what would you have done?

A. I guess I would have stood there.

Q. About how long were you and Mr. Davis on the side of the road, between the time you stopped him and the time the ambulance finally took him on to the hospital?

A. The time records indicate twenty-two minutes.

Q. Which time records are you referring to, sir?

A. Those from the city.

* * *

(p. 168) A. Well, as the Davis vehicle approached my patrol unit, I had no intention of stopping the vehicle at that time. I noticed a vehicle with emergency flashers on which you'll see sometimes on four hundred. As the Davis vehicle approached my patrol unit he crossed the center lane, at which time I had to leave the roadway to keep from colliding with his vehicle.

Q. Well, what did you do, Mr. Ramey?

A. I turned around immediately.

Q. Where did you turn around at?

A. I turned around on the side of the road.

Q. You never got to the intersection itself?

A. No.

Q. And then what happened when you turned around?

A. I proceeded to follow the vehicle.

Q. If you would, tell us how far you followed him?

A. I followed the vehicle from where I had turned around until where I pulled the light, somewhere in this area to the ramp here.

Q. About what speed would you estimate Mr. Davis to be going up this hill?

A. I wouldn't know how fast he was going.

Q. How fast were you going?

A. I was moving at a relatively slow speed, maybe thirty, thirty-five miles an hour.

Q. Well, was Mr. Davis pulling away from you?

* * *

(p. 176) department enroute?

A. I had been advised, not only by my training officer but—my training officer advised me that if we came upon a forty-one-four, which involved injuries, to automatically request a rescue—that someone would be there.

Q. But this wasn't an accident, was it?

A. That's right, but it was still an emergency which needed emergency medical services or people trained in that area.

Q. So then, it's a little bit different than what you testified to a minute ago. If somebody did call you, had you been told by someone with the Roswell Police Department of the procedure in that situation? Is that what you are saying now?

A. It was common knowledge they worked with the police department. They wear beepers, a page comes, they can be paged out from their homes, cars; they carry jump bags.

Q. The question, Mr. Ramey, was: Did somebody with the Roswell Police Department, one of your supervisors, tell you that that is the accepted thing that you were supposed to do, is call the Roswell Volunteer Emergency Rescue Squad?

A. No, sir.

Q. On May 24th, during and before you began your patrol and before you stopped Mr. Davis, did you have any occasion to go by the fire station and see if anybody was on duty?

A. I had noticed some personal vehicles parked there that night, sir, but whether it was occupied by a live, breathing

* * *

(p. 193) A. I remember a lady being there that was later identified as a neighbor and I assumed that was who it was.

Q. Did anybody at any time tell you that Mr. Davis was enroute to the hospital and that was his wife that y'all were treating?

A. It's possible that Officer Ramey told me that when I first arrived. When he advised me that—I think it was Officer Ramey that advised me that she had a heart condition.

Q. Did he advise you that Mr. Davis was enroute to the hospital?

A. I can't recall.

Q. If Mr. Ramey had advised you that she was enroute to the hospital, would that have affected in any way the way that you carried out your duties as supervisor that night?

A. No, sir.

Q. You would not have allowed Mr. Davis to proceed?

A. I was never—that was never a question asked of me, if he could leave.

Q. Sir, you were the supervisor; were you not?

A. Yes, sir.

Q. That means you were the man in charge at the scene?

A. Yes, sir.

Q. Had he asked you, if Mr. Davis had wanted to leave the scene and continue on to the hospital with his wife, would you have let him?

(p. 194) A. More than likely, I would have had him wait until the E.M.T.S. arrived and let him make that decision rather than me.

Q. After the incident was over, did you have occasion to review the incident with Officer Ramey?

A. I don't know if we reviewed it anymore than any casual conversation. I don't recall.

Q. How long had Officer Ramey been assigned to your watch before this incident?

A. I don't know. I don't remember if he—I knew he had been on, on training about three months. I don't know if he came straight to my shift or if he started on another one and then was assigned to mine.

Q. Captain, I'll ask you to assume, unless I indicate otherwise, that Officer Ramey worked for you prior to the Davis incident and up to the Davis incident?

A. Okay.

Q. Was Mr. Ramey assigned to your shift during all this time?

A. Yes, sir.

Q. Did you conduct any training classes or anything like that for Mr. Ramey?

A. I don't recall. I know at one point when Ramey was employed, we had our—when set up an orientation program for new officers and I don't recall the dates of it. It might have been in April, which was prior to this incident.

* * *

(p. 200) wouldn't use our police vehicles to transport patients.

Q. And that policy was in effect at the time of the Davis incident?

A. Yes, sir.

THE COURT: Now, when you say that, are you talking about a policy regarding an emergency situation or just an accommodation to take somebody to the hospital that wants to go? What are you talking about?

THE WITNESS: I'm talking about an emergency situation.

BY MR. HARDWICK:

Q. If, when you arrived on the scene at four hundred a little after 6:00 a. m. Saturday morning. Four hundred staring you in the face and just eight miles down the road is a hospital, if officer Ramey or Mr. Davis or anybody else had told you that Mrs. Davis was critically ill and that her doctor had said get here to St. Joseph's Hospital as soon as possible, would you have put Mrs. Davis in your police cruiser and taken her?

MR. WEBB: Objection to the form of the question. This is his witness and as his witness that's a leading question, and contains facts not in evidence and is otherwise improper in calling for speculation.

THE COURT: Well, I don't know whether the officer can answer the question or not. If he can answer it, I really don't see any objection to his answering it—if he can answer it.

THE WITNESS: No, sir; I would call rescue.

(p. 201) MR. HARDWICK: That's all the question I have of this witness, Your Honor.

MR. WEBB: I have just a couple of questions.

CROSS-EXAMINATION

BY MR. BOYLE:

Q. Captain Watson, in view of your testimony, I am foggy as to what the custom is. I understand it's the custom in the City of Roswell, when you find somebody sick or injured you call for an ambulance; is that correct?

A. Yes, sir; if their injury warrants being transferred to a medical facility.

Q. Under the particular facts that Officer Ramey found on the morning of the 24th, his dealing with that situation, there is no set policy in the City of Roswell in that regard, is there?

A. No, sir.

Q. That was left to his discretion, wasn't it?

A. Yes, sir.

Q. Thank you, Captain.

REDIRECT EXAMINATION

BY MR. HARDWICK:

Q. Just one question, Captain. You said if their injury warrants. Who determines what injury warrants transportation to a hospital or ambulance? I'm sorry. Strike that. You testified you would call an ambulance if the injury warrants it. Who determines if the injury warrants an ambulance?

* * *

(p. 205) Officers to dismissing police officers.

Q. Starting with the employment of police officers, who set the standards and requirements to be a police officer for the City of Roswell while you were chief?

A. The state actually set them.

Q. By state law?

A. Yes, sir.

Q. And what was that state law as far as you were concerned, as far as you understood it?

A. They had to be a certain age, couldn't be convicted of a felony. Had to meet certain physical requirements, as in a certain—pass a certain physical. Within a year of employment. They would have to go through 240 hours of mandate training and become certified.

Q. Did you add any additional requirements to that or is that the basic standards that you operated under, that was the basic state standards?

A. We required officers to take polygraph tests and extensive background checks.

Q. Those with the conditions in 1980?

A. Yes, sir.

Q. And, just so there is no misunderstanding, any time—unless I ask specifically otherwise, when I ask for policy, conditions of training and anything, anything like that, I am asking about specifically 1980, at the time of Mr. Davis'

* * *

(p. 209) A. Well, of course, I use a chain of command and if there were any particular problems that arose on a shift the sergeant at the time, at that time, or the corporal at that time would bring these matters to my attention. This was the only way I had of knowing about them.

Q. Prior to the incident with Mr. Davis, did any of these officers bring to your attention any similar incidents as to Mr. Davis?

A. No, sir.

Q. Did you and your supervisors ever discuss the need for procedures to handle emergencies such as Mr. Davis' procedure or situation?

A. Not at that particular time; no, sir.

Q. Did you have any written policy that you gave the new — officers — to handle emergencies like Mr. Davis's.

A. No, sir; none other than it was just up to their own discretion as to how to handle that type of situation.

Q. After the incident with Mr. Davis, did Mr. Davis or anyone on his behalf ever complain to you about this incident and the activities of your police officers?

A. I didn't quite understand the entire question.

Q. After Mr. Davis' incident, did either Roy Davis or anyone acting on his behalf complain to you about the incident with Mr. Davis?

A. I spoke with Mr. Davis several times on the phone

* * *

(p. 211) document?

A. I don't recall receiving this letter.

Q. Never have seen that letter before today?

A. I don't recall ever seeing it.

Q. And you didn't make any investigation as to the activities of your officers involving Mr. Davis' situation?

Roswell Police Dept.

INCIDENT LOCATION
HWY 400 ER

BUILDING NO. APT. NO.

NATURE OF COMPLAINT
76-4 11

DAY OF WEEK: M T W T F S S — X

COMPLAINANT

PHONE #

COMPLAINANTS ADDRESS

REMARKS
RR 726

☐ WRECKER ☐ AMBULANCE

CLOSE 410412

DISP
ARR
COMP
DISPATCHED 05:25
ARRIVED 05:45
COMPLETED 05:47

CASE NUMBER
80 05 1410

RECEIVED BY
430

HOW RECEIVED
☐ PHONE ☐ PERSON ☐ RADIO ☐ OTHER ☐ TELETYPE

PATROL AREA
S-2

CENSUS TRACT
23

TIME/DATE RECEIVED
5-1 . 4

DISPATCHED BY
430

OFFICER NO.
131

UNIT NO.
A1 D E

BACKUP
133 111 143

STATUS
1 GOA
2 UNF 19
3 NAT
4 MISC. INCIDENT
5 INCIDENT REPORT
6 ACCIDENT REPORT
7 TRAFFIC TICKET
8 TRAFFIC WARNING
9 T.O.T. DETECTIVES

P-6
3/04/64
am

BEST AVAILA

BLE COPY

INCIDENT LOCATION

HBR 400 ER

BUILDING NO. APT. NO.

NATURE OF COMPLAINT

76-4

DAY OF WEEK

M T W T F S S

COMPLAINANT PHONE #

COMPLAINANTS ADDRESS

REMARKS

☐ WRECKER ☐ AMBULANCE

DISP 06:29 DISPATCHED

ARR 06:33 ARRIVED

COMP 06:47 COMPLETED

CASE NUMBER # 300

Roswell Fire Department

RECEIVED BY 430

HOW RECEIVED ☐ PHONE ☐ PERSON ☐ RADIO ☐ OTHER ☐ TELETYPE

PATROL AREA S-2

CENSUS TRACT 23

TIME/DATE RECEIVED 5/24

DISPATCHED BY 430

OFFICER NO. King 1

UNIT NO. (M) D E

BACKUP

STATUS

1 GOA
2 UNF 1/4 Acc
3 NAT
4 MISC. INCIDENT
5 INCIDENT REPORT
6 ACCIDENT REPORT
7 TRAFFIC TICKET
8 TRAFFIC WARNING
9 T.O.T. DETECTIVES

P-9
3/12/84

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